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2 SUPREME COURT OF THE STATE OF NEW YORK

3 COUNTY OF NEW YORK

4 -----x

5 MICHAEL BARR,

6

7 Plaintiff/Petitioner,

8 - against- Index No. 159781/2014

9 LIDDLE & ROBINSON, L.L.P., and JEFFREY L.

10 LIDDLE,

11

12 Defendants/Respondents.

13 -----x

14

15 July 28, 2016

16 10:22 a.m.

17

18 Deposition of Defendant/Respondent

19 JEFFREY L. LIDDLE, held at the offices of  
20 Liddle & Robinson, L.L.P., 800 Third  
21 Avenue, New York, New York, pursuant to  
22 Notice, before NANCY SORENSEN, a Notary  
23 Public of the State of New York.

24

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## 2 A P P E A R A N C E S:

3

4 GARVEY SCHUBERT BARER

5 Attorneys for Plaintiff/Petitioner

6 Twentieth Floor

7 100 Wall Street

8 New York, New York 10005-3708

9 BY: ALAN A. HELLER, ESQ.

10 - and -

11 BENJAMIN D. LIEBOWITZ, ESQ.

12

13 BRAFF, HARRIS, SUKONECK &amp; MALOOF

14 Attorneys for Defendants/Respondents

15 305 Broadway

16 New York, New York 10007

17 BY: BRIAN C. HARRIS, ESQ.

18

19

20 ALSO PRESENT:

21

22 MICHAEL BARR

23

24

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## STIPULATIONS

3

4 IT IS HEREBY STIPULATED, by and between the  
5 attorneys for the respective parties hereto,  
6 that:

7 All rights provided by the C.P.L.R., and  
8 Part 221 of the Uniform Rules for the Conduct of  
9 Depositions, including the right to object to  
10 any question, except as to form, or to move to  
11 strike any testimony at this examination is  
12 reserved; and in addition, the failure to object  
13 to any question or to move to strike any  
14 testimony at this examination shall not be a bar  
15 or waiver to make such motion at and is reserved  
16 to, the trial of this action.

17 This deposition may be sworn to by the  
18 witness being examined before a Notary Public  
19 other than the Notary Public before whom this  
20 examination was begun but the failure to do so  
21 or to return the original of this deposition to  
22 counsel, shall not be deemed a waiver of the  
23 rights provided by Rule 3116, C.P.L.R. and shall  
24 be controlled thereby.

25 The filing of the original of this

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1

2 deposition is waived.

3 IT IS FURTHER STIPULATED, a copy of this  
4 examination shall be furnished to the attorney  
5 for the witness being examined without charge.

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2 J E F F R E Y L. L I D D L E, called as a  
3 witness, having been duly sworn by a Notary  
4 Public, was examined and testified as follows:

5 EXAMINATION BY

6 MR. HELLER:

7 Q. Good morning, Mr. Liddle. My name is  
8 Alan Heller. I'm from the firm of Garvey  
9 Schubert Barer, and I represent Michael Barr in  
10 connection with the lawsuit against Liddle &  
11 Robinson and Jeffrey Liddle.

12 I'm going to ask you some questions  
13 today. Obviously, I assume you know the rules,  
14 but I'll just tell you my personal rules that if  
15 there's any question that you don't understand,  
16 please let me know and I'll be more than happy  
17 to rephrase it.

18 I only want you to answer questions  
19 that you understand so the record is clear.

20 Also I have a very soft speaking  
21 voice and I'm a little -- my throat is bothering  
22 me, so if you don't hear me, I'll try to speak  
23 up, especially with the background noise that we  
24 have.

25 Also, if Brian objects, please allow

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1                           J. L. Liddle

2         him to state his objection for the record and  
3         either Brian or I will tell you whether or not  
4         to answer the question.

5                           In connection with your preparation  
6         for the deposition today, did you review any  
7         documents?

8                           A.     Yes.

9                           Q.     What documents did you review?

10                          A.     The initial retainer agreement, I  
11         looked at the -- when I say looked at it, I  
12         perused the original statement of claim in  
13         arbitration and I perused The Wall Street  
14         Journal article.

15                          Total document review time was  
16         probably under 3 minutes, just so you understand  
17         what I mean by peruse.

18                          Q.     I fully understand.

19                          So other than those three documents,  
20         the initial retainer agreement, the statement of  
21         claim and The Wall Street Journal article, did  
22         you peruse any other documents in preparation  
23         for this deposition?

24                          A.     I know there were documents marked in  
25         Michael Barr's deposition. I had a packet of

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2 them. I literally just flipped through them  
3 with my thumb. I didn't have the time or  
4 opportunity to read them.

5 Q. Did you have an opportunity to peruse  
6 Michael Barr's separation agreement and release  
7 from September of 2002?

8           A.       That was, I believe, in that packet  
9       and I flipped by it and I saw one or two pages  
10      of it.   But, you know, it was, you know, I --  
11      I've seen those agreements before.

12 Q. Do you recall when the first time was  
13 that you saw that agreement before?

14 MR. HARRIS: Which agreement.

15 MR. HELLER: The one that he just  
16 referred to, Michael Barr's separation  
17 agreement and release of September 2002.

18           A.     Michael Barr's separation agreement  
19     and release, I couldn't tell you whether I saw  
20     it at the time or the first time I saw it was  
21     when I flipped through the documents.

22                   There were many individuals, all of  
23 whom I believe received separation agreements,  
24 which were, I believe, identical. And I looked  
25 at the ones who were our clients at the time

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2                           that the separation agreements were provided.

3                           By the time Michael Barr approached us to  
4                           represent him, several months had passed. I  
5                           don't think it was an issue of reviewing the  
6                           separation agreements at that point.

7                           Q.         But you had seen a form of the  
8                           separation agreement which you believe were  
9                           identical prior to the time the statement of  
10                          claim was filed in this action -- in the action  
11                          against Robertson Stephens?

12                          MR. HARRIS: Objection to the form of  
13                          the question.

14                          Q.         Do you understand the question?

15                          A.         I'm not sure I understand the  
16                          question.

17                          Q.         You had mentioned that you saw  
18                          separation agreements of some of the other  
19                          individual plaintiffs in the Robertson Stephens  
20                          matter awhile ago.

21                          I'm not sure when you saw Mr. Barr's  
22                          separation agreement, but you say other forms  
23                          that you believe were identical to the one of  
24                          Mr. Barr's; correct?

25                          MR. HARRIS: Objection to form.

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2                           A.     No, that's not what I said.

3                           Q.     So please clarify?

4                           A.     I don't understand what you mean by  
5     me clarifying your question.

6                           MR. HARRIS: You have to ask him a  
7     question.

8                           Q.     When did you first see a separation  
9     agreement of any of the individuals who sued  
10   Robertson Stephens in the New York Stock  
11   Exchange and arbitration?

12                          A.     It's going to be a long day. It was  
13   not a FINRA arbitration.

14                          Q.     It was a FINRA decision, I apologize.  
15   The New York Stock Exchange arbitration. And it  
16   may be a long day.

17                          A.     I first saw one sometime after  
18   September 17th or 18th, whenever the day was  
19   that was on it.

20                          There were never any issues in this  
21   case or in the case in any respect because  
22   everybody who had come in initially had been  
23   terminated on July 17th and taken either notes  
24   or had detailed information on what they were --  
25   what was being proposed.

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2                 Q.      All I'm asking is did you see the  
3                 separation agreement?

4                 A.      I just said I saw it sometime shortly  
5                 after they received it and that would be  
6                 obviously before this litigation.

7                 Q.      Did you review the Robertson Stephens  
8                 group cash equivalent deferred compensation  
9                 plan?

10                MR. HARRIS: When.

11                A.      I believe --

12                MR. HELLER: In preparation for this  
13                 deposition.

14                A.      -- I looked at a couple of paragraphs  
15                 of, I believe, the 2001 plan.

16                Q.      When did you look at that?

17                A.      This morning.

18                Q.      Do you recall when the first time was  
19                 --

20                A.      You're talking about for the most  
21                 recent time?

22                Q.      Yes.

23                A.      This morning.

24                Q.      When was the first time, to the best  
25                 of your recollection, you saw the 2001 plan?

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2                         A. I'm not sure.

3                         Q. Do you recall whether it was before  
4 or after the arbitration was filed?

5                         A. I believe it was before.

6                         Q. Other than your counsel, did you  
7 discuss today's deposition with anyone in  
8 connection with your preparation for the  
9 deposition?

10                        A. I called Jim Hubbard this morning.  
11 He's out of the office.

12                        Q. And what did you discuss with Jim  
13 Hubbard?

14                        A. I asked him if he had any  
15 recollections of interactions with Mr. Barr, and  
16 I asked him if he recalled who among our lawyers  
17 was assigned to handle his testimony and work  
18 with him, because I wasn't.

19                        Q. And how did he respond?

20                        A. He says he thinks he handled the  
21 testimony and that's guessing that one or two of  
22 the other people in the office had contact with  
23 Mr. Barr from time to time.

24                        Q. Did he mention the names of the  
25 others?

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2                           A.        No.

3                           Q.        Do you know if David Marek had any  
4                           contact with Mr. Barr during the course of the  
5                           arbitration?

6                           A.        During the course of the arbitration,  
7                           Mr. Barr attended several sessions, I believe,  
8                           that were not sessions where he was testifying  
9                           or maybe he was about to testify.

10                          I think that everybody had contact  
11                          with him who was on the team. There were at any  
12                          time between four and seven lawyers in  
13                          attendance from our side.

14                          Q.        Do you know if David Marek interacted  
15                          with Mr. Barr in connection with the preparation  
16                          of Mr. Barr's case against Robertson Stephens?

17                          A.        I don't know.

18                          Q.        How about Christine Palmieri?

19                          A.        I don't -- I don't know if she  
20                          interacted with him. I don't think she did.  
21                          But as I said, I do know that at some point when  
22                          this started, I had asked her if she had handled  
23                          his testimony.

24                          Q.        And what was her response?

25                          A.        No.

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2                 Q.      What role did Christine Palmieri play  
3                         in connection with the Robertson Stephens  
4                         arbitration?

5                 A.      She was one of the team members.

6                 Q.      David Marek was also one of the team  
7                         members?

8                 A.      Yes.

9                 Q.      And Jim Hubbard was one of the team  
10                        members?

11                A.      Yes.

12                Q.      Do you recall who else was on the  
13                        team?

14                A.      I recall some of them.

15                Q.      Please tell me?

16                A.      There were probably as many as 15  
17                        lawyers were on the case at one time.

18                Q.      Was it every lawyer in your office?

19                A.      No, not at any specific time.

20                Q.      How about Michael Grenert?

21                A.      He worked on the case.

22                Q.      When was Liddle & Robinson formed?

23                A.      The original firm was formed by June  
24                        4th, 1979.

25                Q.      When it was formed, did it have a

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2 specialty?

3 A. Yes, we practiced law.

4 Q. What type of law?

5 A. Litigation.

6 Q. Any particular type of litigation?

7 A. In courts and arbitration.

8 Q. Is there a particular area of  
9 expertise in courts and arbitration?

10 A. There were several areas of  
11 expertise.

12 Q. What are those areas?

13 A. Now or then or --

14 Q. Then.

15 A. My expertise was in complex  
16 corporate, real estate, securities, commodities  
17 litigation, where my original partner's  
18 expertise was in fair trade, commission  
19 litigation, antitrust litigation, and Department  
20 of Energy, press control litigation. My other  
21 partner is a tax lawyer.

22 Q. Did you have a transactional  
23 practice?

24 A. We did for a time period, yeah, for  
25 about four years.

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2                         Q.     What time period was that?

3                         A.     1979 and 1983.

4                         Q.     Did there come a time that you  
5                         started participating in employment litigation?

6                         A.     I participated in employment  
7                         litigation from the beginning of when I started  
8                         getting clients because I was hired to do that  
9                         by my clients.

10                        Q.     And do you have an expertise in  
11                        employment litigation, as well?

12                        A.     I would say that by now, I'm  
13                        practicing law enough that I have a specialty in  
14                        that, yes.

15                        Q.     And you had a specialty in that in  
16                        around 2002, as well; correct?

17                        A.     Yes, I handled -- probably 50 percent  
18                        or more of my time was spent on employment  
19                        litigation.

20                        Q.     Did any of those litigations involve  
21                        the disputes over deferred compensation?

22                        A.     Yes.

23                        Q.     And generally, do the disputes over  
24                        deferred compensation deal with agreements  
25                        themselves, deferred compensation agreements?

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2           A.     I really don't know how to answer  
3 your question.

4 Q. In connection with the dispute over  
5 deferred compensation, are there situations  
6 where there is an allegation that deferred  
7 compensation is due where there's no agreement  
8 between parties?

9           A.       There are situations like that, yes.

10 Q. And there are situations where there  
11 are written agreements between partners?

12           A.       There are definitely situations where  
13       there are written agreements between parties. A  
14       lot of deferred compensation plans exist, and  
15       those are written.

16 Q. And generally --

17 MR. HELLER: Strike that.

18 Q. In your experience as an employment  
19 litigator and who did deferred compensation  
20 litigation, do some of those agreements have  
21 non-disparagement clauses?

22 A. Perhaps.

23 Q. Do some not have non-disparagement  
24 agreements?

25 A. Yes.

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2                         Q.     Are you familiar with Michael Barr?

3                         MR. HARRIS: Objection to the form of  
4                         the question.

5                         MR. HELLER: Strike that.

6                         Q.     When was the first time you met  
7                         Michael Barr?

8                         A.     Even Michael Barr. What, pardon?

9                         Q.     When was the first time you met  
10                        Michael Barr?

11                       A.     I don't know.

12                       Q.     Was it in around 2002?

13                       A.     It might have been.

14                       Q.     Was it before the statement of claim  
15                        was filed in the arbitration?

16                       A.     I think so, but I'm not sure.

17                       Q.     Do you have a recollection of a first  
18                        meeting with Michael Barr?

19                       A.     No.

20                       Q.     Did there come a time that your firm  
21                        was engaged by Michael Barr to represent him?

22                       MR. HARRIS: Objection to the form of  
23                        the question.

24                       A.     The initial retention agreement  
25                        appears to be dated by Mr. Barr. I'm assuming

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2 that's his signature on it in November of 2002.

3 Q. You have no recollection of speaking  
4 to Mr. Barr before November of 2002?

5 A. I have no recollection of speaking  
6 with Mr. Barr in November of 2002 or before,  
7 certainly, and I have really only the vaguest  
8 recollections of speaking with Mr. Barr  
9 since November of 2002.

10 Q. What was the reason that Mr. Barr  
11 engaged Liddle & Robinson to represent him?

12 A. He wanted to participate in the  
13 planned arbitration seeking the contested  
14 compensation that he and many others felt they  
15 were due upon their termination from Robertson  
16 Stephens.

17 Q. Were there certain --

18 A. But I didn't have that conversation  
19 with him.

20 Q. Okay, so how did you find out that he  
21 wanted to participate in the planned arbitration  
22 seeking contested compensation?

23 A. Somebody told me.

24 Q. Who told you?

25 A. I don't remember.

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2 Q. How many other participants were  
3 there?

4 A. Forty-one other participants.

5 Q. Did you play a role in the engagement  
6 by any of those other 41 participants?

7 A. Yes.

8 Q. Who of the 41 did you play a role in  
9 their engagement of Liddle & Robinson?

10 MR. HARRIS: I objection to the form.

11 Q. You can answer.

12 A. Well, I was contacted by a -- an  
13 individual who had been a client of mine in the  
14 past named Jonathan Goldman.

15 Q. Other than Mr. Goldman, did any other  
16 individual reach out to you personally to become  
17 part of that group?

18 A. I think there were, but I didn't -- I  
19 just don't remember who came to me because of  
20 Jonathan Goldman or who came to me because of a  
21 reputation in the industry or who might have  
22 come for other reasons at that time.

23 Q. But at some point in time, 41  
24 individuals, plus Mr. Barr, engaged Liddle &  
25 Robinson to represent them in connection with

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2 the -- I'll call it the RSI arbitration?

3 A. I think accurately we also had one or  
4 two on this, but I think 41 individuals had  
5 engaged us, and then Mr. Barr.

6 Q. Were there any claims that Liddle &  
7 Robinson was not engaged to seek on behalf of  
8 Mr. Barr?

9 A. Yes.

10 Q. What were those claims?

11 A. They're delineated in the standard  
12 retainer agreement that I mentioned earlier that  
13 I reviewed. That retainer agreement was common  
14 to everyone.

15 MR. HELLER: This is Plaintiff's 1.

16 (Plaintiff's Exhibit 1, a copy of the  
17 retainer agreement Mr. Barr signed retaining  
18 Liddle & Robinson, marked for  
19 identification, as of this date.)

20 Q. Mr. Liddle, placed before you is a  
21 document that was marked as Plaintiff's Exhibit  
22 1 for identification. It was previously marked  
23 as Defendant's 8 at the deposition of  
24 Michael Barr.

25 It's a letter on Liddle & Robinson

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2 letterhead, 3-page document that appears to have  
3 been signed on your behalf.

**4** Do you recognize this document?

5 A. This is -- this is the document that  
6 I referred to earlier.

7 Q. And is this a true and accurate copy  
8 of the retainer agreement that Mr. Barr signed  
9 retaining Liddle & Robinson?

10           A.       I would have to say if it was -- it  
11       probably is, but I -- I didn't pull the  
12       agreements out.  I'm not the custodian of the  
13       agreements.

14 Q. Now we mentioned that the claims that  
15 Liddle & Robinson would not be representing  
16 Mr. Barr were identified in this document.

17 Can you tell me where those claims --  
18 excluded claims are?

19                  A.        Yes, there are nine exclusions on  
20 page 2.

21 Q. Is one of them identified by  
22 subparagraph E, the 2002 cash equivalent plan  
23 deferred amount?

**24**                  A.                  **Correct.**

25 Q. Do you have an understanding what the

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1 J. L. Liddle

2 issue was --

3 MR. HELLER: Strike that.

4 Q. Why was the 2002 cash equivalent plan  
5 deferred amount excluded from the retainer?

6 A. Well, all of them were excluded for  
7 the same reasons.

8 Q. And what were they?

9 A. These were excluded because the  
10 individuals who were hiring us had approached us  
11 saying that they did not have a concern about  
12 recovering these -- these specific items, and  
13 they didn't want to pay us a fee for recovering  
14 something that they didn't need a lawyer to  
15 recover for them.

16 Q. Did you ask these individuals for  
17 details about, and I'll say in particular, the  
18 2002 cash equivalent plan deferred amount, and  
19 ask to see documents referring to those claims?

20 A. The people who had the cash  
21 equivalent plan amounts for '01 and '02 were  
22 adamant that they had been told on -- on or  
23 about the July 17th date when they were all told  
24 what would happen, that they would get on the  
25 vesting dates their cash equivalent plan, plus

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2 whatever interest rate they were getting on it,  
3 whether or not they signed the separation  
4 agreement and release. And, therefore, it was  
5 not something that they wanted us to pursue on  
6 their behalf.

7 Q. And isn't it true that the separation  
8 agreement and release actually said that?

9 A. The separation agreement and release  
10 had a list later on, I believe so, yeah. We  
11 were not hired by anybody to pursue anything  
12 with regard to the cash equivalent plan, prior  
13 to the events that took place much later.

14 Q. Well, did anyone from Liddle &  
15 Robinson request that Mr. Barr provide Liddle &  
16 Robinson with a copy of the separation agreement  
17 and release?

18 A. I don't know. I, as I told you, I  
19 really had very little contact with Mr. Barr.  
20 Somebody might have.

21 Q. Did Mr. Marek ever tell you that he  
22 requested that of Mr. Barr?

23 A. Did he tell me -- what's the "that"  
24 in your question?

25 Q. I was talking about the separation

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2                         agreement and release.

3                         A.       Please ask a question with the  
4                         pronoun that in there. Ask it with some  
5                         specificity so I can answer.

6                         Q.       I will do my best. That's why I  
7                         asked you if you don't understand a question, to  
8                         mention it to me and I'll do my best --

9                         A.       I don't understand the question.

10                        Q.       Okay. Did Mr. Marek tell you that he  
11                        had asked Mr. Barr to provide him with the  
12                        separation agreement and release?

13                        A.       When?

14                        Q.       At the time Mr. Barr engaged Liddle &  
15                        Robinson.

16                        A.       I have no recollection of the  
17                        conversation, if any, with Mr. Marek at the time  
18                        Mr. Barr signed his retainer agreement.

19                        MR. HELLER: Mark this as Plaintiff's  
20                        Exhibit 2.

21                        (Plaintiff's Exhibit 2, a letter from  
22                        Michael Barr to David Marek of Liddle &  
23                        Robinson dated October 2, 2002, marked for  
24                        identification, as of this date.)

25                        Q.       Mr. Liddle, placed before you is a

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2 document that's marked as Plaintiff's Exhibit 2  
3 for identification.

4 It's a letter from Michael Barr to  
5 David Marek of Liddle & Robinson dated October  
6 2, 2002.

7 Have you ever seen this document  
8 before?

9 A. No.

10 MR. HELLER: Mark this 3.

11 (Plaintiff's Exhibit 3, a separation  
12 agreement and release dated September 18,  
13 2002 to Michael Barr, Bates stamped Barr 120  
14 through Barr 136, marked for identification,  
15 as of this date.)

16 Q. Mr. Liddle, placed before you is a  
17 document marked as Plaintiff's Exhibit 3. It's  
18 a separation agreement and release dated  
19 September 18, 2002 to Michael Barr, and it's a  
20 document that's Bates stamped Barr 120 through  
21 Barr 136.

22 Have you ever seen this document  
23 before?

24 A. This document was one of the  
25 documents I perused this morning.

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1 J. L. Liddle

2 Q. And is this a document -- have you  
3 ever seen --

4 MR. HELLER: Strike that.

5 Q. You testified previously that you had  
6 seen some of the other plaintiffs' or claimants'  
7 separation agreements and release; is that  
8 correct?

9 A. Yes.

10 Q. And you had seen those prior to the  
11 filing of the statement of claim; is that  
12 correct?

13 A. Yes.

14 Q. Do you have any reason to believe  
15 that Mr. Barr's separation agreement and release  
16 is different from the separation agreement and  
17 releases that you reviewed prior to the filing  
18 of the arbitration?

19 A. I have no reason to believe one way  
20 or the other.

21 Q. I'll direct your attention to  
22 paragraph -- to page 4, paragraph B 2, which  
23 speaks of the 2002 cash equivalent plan?

24 A. Um-hmm.

25 Q. Could you review that paragraph,

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2                         please, on page 4 and 5?

3                         A.         (The witness complies with request.)

4                         Okay.

5                         Q.         Do you recall reviewing similar  
6                         clauses in the other separation agreements that  
7                         you reviewed that say the same thing regarding  
8                         the 2002 cash equivalent plan?

9                         MR. HARRIS: Objection to the form of  
10                        the question.

11                        Q.         You can answer it if you understand.

12                        A.         I don't recall reviewing them, but I  
13                        do recall the gist of what I just read.

14                        Q.         The gist was that the offer was that  
15                        the deferred compensation would be paid in a  
16                        lump sum amount at the same time the separation  
17                        payment, that was the offer?

18                        MR. HARRIS: Are you reading from  
19                        something?

20                        Q.         Was it your understanding when the  
21                        offer was made, pursuant to the separation  
22                        agreement, to pay the entire of the deferred  
23                        compensation in a lump sum rather than over  
24                        time?

25                        A.         I didn't have an understanding. I

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2 don't have an understanding now. It was never a  
3 relevant consideration because nobody came here  
4 to have us review the separation agreement and  
5 release.

6 They all came here with the purpose  
7 being that they wanted to pursue litigation for  
8 the things that were not excluded on the  
9 retainer, period.

10 Nobody our group signed a separation  
11 agreement and release.

12 Q. True. But you had an understanding,  
13 based on your conversations with the claimants  
14 who had deferred compensation, that they weren't  
15 concerned about the deferred compensation; is  
16 that true?

17 A. I would not phrase it that way at  
18 all, but, you know, so --

19 Q. You told me that -- that you were  
20 informed that they weren't concerned about their  
21 deferred compensation and that's why they did  
22 not retain you to pursue --

23 A. I didn't use those words.

24 Q. What words did you use, please tell  
25 me?

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2                 A.     The words that I used are in the  
3                record. The idea is that they had been assured  
4                that they would receive their CEP plan monies  
5                and, therefore, they did not want to hire us to  
6                get their CEP plan monies and have to pay a fee  
7                for something that they were already going to  
8                get.

9                         Were they concerned, I don't -- you  
10               know, that's a more of an emotional psychiatric  
11               term as far as I can tell.

12                      But they didn't want us to pursue it  
13               because they didn't want to pay a fee to have  
14               something occur with our involvement that was  
15               going to occur anyway.

16                     Q.     Do you recall whose separation  
17               agreement and releases you reviewed prior to the  
18               arbitration?

19                     A.     No.

20                     Q.     You reviewed at least one separation  
21               agreement and release prior to the arbitration?

22                     A.     I think so. Let me just clarify one  
23               thing in your questions, when you say, "you,"  
24               you're referring to me personally?

25                     Q.     Yes, I'm only referring to you. And

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2             if you didn't, please tell me, and I'll ask you  
3             if you know anybody else?

4             A.      Okay, because there's two defendants.  
5             I presume I'm appearing on behalf of both.

6             Q.      True, but I'm deposing you as you.

7             At the end of page 4 --

8                         MR. HARRIS: What exhibit are you  
9                         referring to?

10                MR. HELLER: The one that's right in  
11                 front of him.

12                A.      Three, for the record?

13                Q.      Yes.

14                A.      I'm a lawyer, I fall into that every  
15                 now and then.

16                Q.      I'm more than happy for you to help  
17                 me out. No problem.

18                         The last sentence begins, "Receiving  
19                 an immediate lump sum payment is not required by  
20                 the terms of the 2002 cash equivalent plan,  
21                 which provides that your 2002 award amount would  
22                 continue to vest, accrue interest and be paid in  
23                 accordance with the regular vesting schedule  
24                 under the Plan, subject to your continued  
25                 compliance with non-solicitation and

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2                           non-disparagement provisions in such Plan."

3                           Do you recall when you reviewed the  
4                           separation agreement and release, reading that  
5                           sentence and in particular, reference to  
6                           non-solicitation and non-disparagement  
7                           provisions?

8                           A.       There's a lot of questions in there.  
9                           The overriding question is do I recall reviewing  
10                          it at the time I read the release, no.

11                          Q.       Were you aware at the time you  
12                          reviewed the separation agreement and release  
13                          that there were non-solicitation and  
14                          non-disparagement provisions in the plan?

15                          A.       And you're talking about the  
16                          separation agreement and release that I actually  
17                          saw as opposed to --

18                          Q.       Yes.

19                          A.       I'm not sure of the timing of that  
20                          awareness, but possibly even before, at the time  
21                          or afterwards.

22                          Q.       Were there other lawyers at your firm  
23                          who were assigned to review the separation  
24                          agreements and releases of the individual  
25                          claimants?

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2                         A. I wouldn't put it that way. A  
3                         separation agreement and release was not an  
4                         issue in our case.

5                         Q. But your firm was provided with  
6                         copies of separation agreements and releases of  
7                         the various claimants; correct?

8                         A. Sometimes. I'd say that all of them  
9                         provided the agreement because as I said, it was  
10                        not an issue.

11                        None of them were going to sign two  
12                        months before they ever got a piece of paper.

13                        RQ                  MR. HARRIS: I demand production of  
14                        the separation agreement and releases that  
15                        were provided to Liddle & Robinson.

16                        MR. HARRIS: Taken under advisement.  
17                        If you make the written request, we'll  
18                        consider it.

19                        Q. Please turn to page 6 of Plaintiff's  
20                        Exhibit 3? And in particular, subparagraph E  
21                        Non-Disparagement.

22                        Do you recall when you reviewed the  
23                        separation agreement and release of the other  
24                        individuals that there was a non-disparagement  
25                        clause in it?

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2                           A. I don't, and none of our clients  
3                           signed a separation agreement and release. It  
4                           was not an issue to have a special  
5                           non-disparagement provision in the law.

6                           Q. I direct your attention to the last  
7                           sentence of paragraph E where it says, "In  
8                           addition, you will continue to be bound by the  
9                           non-disparagement provisions that are contained  
10                          in, and in certain instances are a condition to  
11                          the receipt of benefits under, the Robertson  
12                          Stephens compensation plans."

13                          Do you see that?

14                          A. I see it.

15                          Q. Do you recall reading that when you  
16                          reviewed the separation agreement?

17                          A. I don't recall reading it.

18                          Q. Turn to Exhibit B in Plaintiff's  
19                          Exhibit 3?

20                          A. What is Exhibit B?

21                          Q. Threes pages from the back.

22                          A. Okay.

23                          Q. Do you recall whether there was an  
24                          Exhibit B attached to the separation agreement  
25                          and release that you read prior to commencement

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2                         of the arbitration proceeding?

3                         A.      I don't, but I have a recollection of  
4                         seeing this of two things. One, the Bayview  
5                         investment, whatever it was, was very briefly  
6                         discussed. We were told under no uncertain  
7                         terms it was unnecessary for us to handle that.

8                         And that looking at the exhibit that  
9                         says -- where it says 2002 cash equivalent plan,  
10                        I think that other separation agreements may  
11                        have had an entry for the 2001 cash equivalent  
12                        plan, as well, or it may have been, the  
13                        catchline may have been 2001 and 2002.

14                        I just -- I'm not sure. I think it  
15                        would have been in a separate paragraph.

16                        Q.      You have a recollection of a  
17                        reference to a cash equivalent plan when you  
18                        reviewed the separation agreement and release?

19                        A.      I have a reference to -- I have a  
20                        recollection of the -- of these things  
21                        refreshing my recollection as to the -- as to  
22                        content that was discussed, whether it was on  
23                        Exhibit B or something else, but I'm refreshed  
24                        as to that.

25                        Perhaps Mr. Barr only had the 2002

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2                         plan and some people had both, and some people  
3                         had one.

4                         Q.         And what is your recollection as to  
5                         what was discussed with regard to the 2001 --

6                         A.         Discussed what?

7                         Q.         You said you have a recollection that  
8                         there was -- something was discussed?

9                         MR. HARRIS: Objection.

10                        A.         I may have missed --

11                        MR. HELLER: Please read back the  
12                        question and answer because you referenced a  
13                        discussion, so that's why I'm asking about  
14                        it.

15                        COURT REPORTER: Question: "Do you  
16                        recall whether there was an Exhibit B  
17                        attached to the separation agreement and  
18                        release that you read prior to commencement  
19                        of the arbitration proceeding?"

20                        Answer: "I don't, but I have a  
21                        recollection of seeing this of two things.  
22                        One, the Bayview investment, whatever it  
23                        was, was very briefly discussed. We were  
24                        told under no uncertain terms it was  
25                        unnecessary for us to handle that."

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2                   "And that looking at the exhibit that  
3                   says -- where it says 2002 cash equivalent  
4                   plan, I think that other separation  
5                   agreements may have had an entry for the  
6                   2001 cash equivalent plan, as well, or it  
7                   may have been, the catchline may have been  
8                   2001 and 2002.

9                    "I just -- I'm not sure. I think it  
10          would have been in a separate paragraph."

15                   Answer: "I have a reference to -- I  
16                   have a recollection of the -- of these  
17                   things refreshing my recollection as to the  
18                   -- as to content that was discussed, whether  
19                   it was on Exhibit B or something else, but  
20                   I'm refreshed as to that.

21                   "Perhaps Mr. Barr only had the 2002  
22               plan and some people had both, and some  
23               people had one."

24 Q. Okay, so you mentioned that the  
25 content was discussed, okay, I was right, so

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2                         there was a discussion.

3                         Who was the content discussed with?

4                         A.      Attorneys within the firm, clients.

5                         Q.      Did these discussions take place

6                         before the filing of the statement of claim?

7                         A.      I'm sure they did.

8                         Q.      Do you recall particulars of the  
9                         discussions?

10                        A.      I recall that when we -- by the time  
11                        we got to actual signing of retainer agreements,  
12                        that the discussions -- the result of the  
13                        discussions were that the members of this group  
14                        did not want us to represent them with regard to  
15                        the 11 items that are contained on page 2 of  
16                        Exhibit 8 -- or I'm sorry --

17                        MR. HARRIS: Defendant's 8.

18                        A.      Defendant's 8. Is that a 2 here?

19                        MR. HARRIS: Plaintiff's 2.

20                        A.      Plaintiff's 2. So that much --

21                        Q.      Plaintiff's 1.

22                        MR. HARRIS: One?

23                        A.      In the retainer agreement?

24                        Q.      Yes.

25                        A.      One, yes.

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2                         Q.       And during those discussions, were  
3                         there any discussions about the fact that the  
4                         cash equivalent plan was subject to  
5                         non-solicitation and non-disparagement  
6                         provisions?

7                         MR. HARRIS: Now once again, object  
8                         as to the form. If you put the question in  
9                         context of time and --

10                        MR. HELLER: He had mentioned  
11                        discussions that occurred prior to the  
12                        filing of the statement of claim.

13                        MR. HARRIS: I just think the  
14                        question could be clearer.

15                        A.       I was referring to discussions that  
16                        occurred prior to the signing of these potential  
17                        agreements, because all of these things were  
18                        excluded before we were retained.

19                        Q.       So let's go to prior to signing the  
20                        retention agreement, during those discussions,  
21                        were there any discussions with the attorneys  
22                        regarding that the cash equivalent plan was  
23                        subject to non-solicitation and  
24                        non-disparagement provisions?

25                        A.       Probably.

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2 Q. Do you recall asking any of your  
3 colleagues or lawyers to get copies of the  
4 non-solicitation and non-disparagement  
5 provisions during the course of discussions  
6 prior to the signing of the engagement letter?

7 A. As stated, I don't recall that.

8 Q. Prior to the signing of the  
9 engagement letter, did Mr. -- do you recall  
10 Mr. Barr expressing to you that he had concerns  
11 about the timing of the filing of the  
12 litigation?

13 A. Prior to him signing the engagement  
14 letter?

15 Q. Yes.

16 A. Number one, I don't. Number two, I  
17 don't have any recollection of talking to  
18 Mr. Barr prior to the engagement letter, so it  
19 would be very hard for me to recollect the very  
20 specific discussion.

21 Q. Do you have a recollection discussing  
22 with any members in the claimant group about  
23 concerns regarding the timing of the filing of  
24 the litigation against RSI?

25 MR. HARRIS: Objection to the form of

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the question.

3 A. Yes.

4 Q. Do you recall who you discussed that  
5 with?

A. Not specifically.

7 Q. Do you recall what the concerns were?

8           A.       I recall -- well, let me put it this  
9 way. I'm not sure that I would characterize it  
10 as concerns.

11 Q. Okay.

12           A.       Let me just say that all these people  
13        were -- virtually all these people were in the  
14        securities business, and most of them had either  
15        every day or a very expert understanding of the  
16        vagaries of change of control provisions.

17 So I -- I recollect the discussion  
18 being more along the lines of, you know, reading  
19 this clause, we don't think the six month time  
20 period in the clause applies to this situation.

Q. And what clause are you referring to?

22           A.       I believe it's Section 8.1 of the CEP  
23       agreements.

Q. And you recall a specific discussion regarding Section 8.1 with members of the group

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2                         prior to the filing of the statement of claim?

3                         A.      Yes.

4                         Q.      Did you discuss with any members of  
5                         the group about waiting until after the first  
6                         vesting date?

7                         A.      Yes.

8                         Q.      And what was that discussion, please?

9                         A.      It's the same discussion. It was a  
10                        steering committee, and there were multiple  
11                        lawyers in my office, and we reviewed the clause  
12                        and we determined that that clause did not apply  
13                        to this situation.

14                        Q.      What was the --

15                        A.      And this is one of these kinds of  
16                        open-ended discussions where -- which I have  
17                        always encouraged in my firm, and we have at  
18                        least the devil's advocate for every position.

19                        So that every nook and cranny of that  
20                        provision was discussed, and it was ultimately  
21                        unanimously agreed that the provision didn't  
22                        apply.

23                        Q.      Were there any notes taken by you in  
24                        that discussion?

25                        A.      No.

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2 Q. Were any memoranda drafted by any of  
3 the lawyers in connection with that provision as  
4 to whether or not it applied?

5 A. I don't recollect.

6 Q. Have any --

7           A.       I don't think so. I think we would  
8 have probably produced it by now.

9                   MR. HELLER: Well, none were. So if  
10                 any memoranda exists --

11           A.       Then there were none.

12 RQ MR. HELLER: -- well, if any exist,  
13 then I demand production of them.

14 Q. Do you know if any of your colleagues  
15 took notes regarding that discussion?

16 A. I don't.

17 RQ MR. HELLER: If any notes exist, I  
18 demand production.

19                           MR. HARRIS: Again, write a letter  
20                           and we'll take it under advisement, if they  
21                           exist.

22 Q. You mentioned a steering committee.  
23 Who are the members of the steering committee?

24           A.       I'm not sure of every member.   I'm  
25       not sure how it evolved, but I believe Jonathan

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2     Goldman was one. I believe Brian Bean was one,  
3     possibly Claude Callander, and I'm not sure  
4     whether he was an actual member or not, but it  
5     could have -- but Chris Greer, and it's possible  
6     that Steve Tishman was, but I'm -- I -- I tend  
7     to think not. He may have just made a point of  
8     calling from time to time more frequently than  
9     others.

10               Q.     What about Clark Callander?

11               A.     Pardon?

12               Q.     Clark Callander?

13               A.     What about him?

14               Q.     Do you recall if he was part of the  
15     steering committee?

16               MR. HARRIS: He just mentioned him.

17               A.     I said Clark Callander. I said I'm  
18     not sure, but he may have been. There may be  
19     others too, I just don't really recollect.

20               Q.     Were members of the steering  
21     committee, did they take part in that discussion  
22     that you said you had with your attorneys?

23               A.     I'm sure that at least one or two of  
24     them were involved in that, but I couldn't tell  
25     you which ones.

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2                 Q.      And it's the conversation where the  
3                 change of control issue was discussed?

4                 A.      The paragraph was discussed as to  
5                 whether disparagement applied. The  
6                 disparagement language dealt with it -- well,  
7                 the clause had a prohibition against soliciting  
8                 employees, and it was for a six month time  
9                 period after you left, except in the case of a  
10                change of control.

11                       That clause applied to both items.  
12                       The first item was the non-solicitation  
13                       provision, the second item was the  
14                       non-disparagement provision.

15                       It ultimately made sense to everybody  
16                       that the change of control issue, especially in  
17                       the situation where the company was put out of  
18                       business, was dispositive of both concerns, as  
19                       well as the legal language in the clause was --  
20                       eliminated the time period, and that that was  
21                       being referenced to both.

22                       Q.      Which attorneys participated in this  
23                       discussion?

24                       A.      I don't remember.

25                       Q.      Was Mr. Marek part of the discussion?

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2                           A. I don't remember.

3                           Q. Ms. Palmieri?

4                           A. I don't remember.

5                           Q. Do you remember how many attorneys  
6 participated in that discussion?

7                           A. I don't remember.

8                           Q. Was it more than one?

9                           A. Oh, I'm sure it was more than one.

10                          My recollection of it is there were a number of  
11 people in my office, but I don't remember.

12                          Q. Do those people still work in your  
13 office?

14                          A. I don't remember who was there.

15                          Q. Do you recall each of the individuals  
16 who worked on the case?

17                          A. Do I recall them without a list of  
18 people who worked on the case? I would recall  
19 them, but I wouldn't recall if they worked on  
20 the case or not.

21                          Q. I will rephrase the question.

22                          A. All right.

23                          Q. Since the time that the arbitration  
24 decision came down, do you know how many  
25 attorneys have left your office, your

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2 employment?

3 A. No, but there have been attorneys who  
4 left the office. There's turnover and there  
5 have been new lawyers.

6 Q. Do you recall if at the time this  
7 discussion occurred regarding the change of  
8 control provision, whether all the attorneys  
9 were working on the RSI matter or took part in  
10 that discussion?

11 MR. HARRIS: Objection to the form of  
12 the question. He told you he doesn't  
13 remember, how can he answer that question.

14 MR. HELLER: I'm asking if he has a  
15 recollection.

16 A. I have no idea.

17 Q. Was there a written document that was  
18 prepared for the members of the group, the  
19 claimants, to indicate your analysis of Section  
20 8.1?

21 A. I don't recollect whether there was  
22 or not.

23 Q. Do you know if there was a verbal  
24 discussion with all of the claimants to disclose  
25 your determination with regard to Section 8.1?

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2                         A.       No.

3                         Q.       Do you know --

4                         A.       We had -- we had meetings from time  
5                         to time where people could call in. We didn't  
6                         have a way of monitoring the call-ins.

7                         But when we had those kinds of  
8                         meetings, I couldn't tell when you they were,  
9                         there were multiple subjects that were  
10                        discussed.

11                        Q.       Were any of the claimants informed of  
12                        your determination with respect to Section 8.1  
13                        prior to the filing of the statement of claim?

14                        A.       Yes.

15                        Q.       Who?

16                        A.       Whichever members of the steering  
17                        committee or other members, other people who had  
18                        called in or had a question about it, they were  
19                        all informed.

20                        Q.       Verbally or in writing?

21                        A.       I'm certain that it was verbally.

22                        Q.       It wasn't in writing, as well?

23                        A.       I don't recollect. I just told you I  
24                        don't recollect.

25                        Q.       This is to the members of the

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2                         steering committee, I'm asking if it was in  
3                         writing, as well?

4                         A.      I don't recollect if there was a  
5                         writing that was addressed to any members of the  
6                         group, which I think was your first question.

7                         MR. HELLER:  Mark this as Exhibit 4.

8                         (Plaintiff's Exhibit 4, a document on  
9                         Liddle & Robinson letterhead dated December  
10                        11, 2002 to Mr. Robert S. Clemente of the  
11                        New York Stock Exchange, Bates stamped Barr  
12                        2380 through 2398, marked for  
13                        identification, as of this date.)

14                        Q.      Mr. Liddle, placed before you is a  
15                        document that's on Liddle & Robinson letterhead  
16                        dated December 11, 2002 to a Mr. Robert S.  
17                        Clemente of the New York Stock Exchange.  It's  
18                        Bates stamped Barr 2380 through 2398.

19                        And on the last page, page 19, it  
20                        appears to be your signature.

21                        Do you recognize this document?

22                        A.      I do.

23                        Q.      What is it?

24                        A.      It's the statement of claim.  It was  
25                        originally filed -- I believe it was filed the

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2 next day, but --

3 Q. So it wasn't filed on December 11,

4 it was--

5           A.       I'm not sure. I thought it might  
6 have been filed by the 12th, but either way, it  
7 was -- this is the statement of claim. It was  
8 either filed on the 11th or filed on the 12th.

9 Q. Did you draft the statement of claim?

10 A. No.

11 Q. Do you know who drafted the statement  
12 of claim?

13           A.       A number of people were in  
14        collaboration, which included myself, drafted  
15        the statement of claim.

16 Q. Looking at the letterhead that has  
17 the names of the attorneys --

18 A. Yup.

19 Q. -- would you please go down there and  
20 tell me if you recall if any of the names  
21 participated in the drafting of the statement of  
22 claim?

23           A.       Well, I see my own name that I  
24 participated. I think that Grenert, Moy, and  
25 Palmieri may have participated in it.

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2                           On the right side, there's  
3                           David Marek, who was an associate at the time,  
4                           and I believe John Karol who was waiting for  
5                           admission to the Bar.

6                           Q.     Does Mr. Karol still work for Liddle  
7                           & Robinson?

8                           A.     No.

9                           Q.     Do you recall when he stopped working  
10                          at Liddle & Robinson?

11                          A.     Years ago.

12                          Q.     How about Mr. Marek, does he still  
13                          work at Liddle & Robinson?

14                          A.     Yes.

15                          Q.     Mr. Grenert, is he still working at  
16                          Liddle & Robinson?

17                          A.     No.

18                          Q.     When did he leave Liddle & Robinson?

19                          A.     Last year.

20                          Q.     Do you know where he is now?

21                          A.     He opened his own law office.

22                          Q.     Is it in New York?

23                          A.     I believe so.

24                          Q.     Is Mr. Moy still at Liddle &  
25                          Robinson?

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2 A. No.

3 Q. When did Mr. Moy leave Liddle &  
4 Robinson?

5 A. Years ago. I don't even -- I think  
6 he may have left before we tried the case,  
7 but --

8 Q. What about Ms. Palmieri, is she still  
9 part of Liddle & Robinson?

10 A. Yes.

11 Q. Mr. Grenert --

12 MR. HELLER: Strike that.

13 Q. Look at this list of names on page 1  
14 of Plaintiff's Exhibit 4, do you recall if any  
15 of the individuals participated in the  
16 discussion on Section 8.1?

17 A. Looking at the list, I don't  
18 recollect who was in that meeting, other than  
19 myself.

20 Q. Looking at the list, do you recall if  
21 any individuals, other than Moy, Palmieri,  
22 Grenert, Marek, and Karol, performed services in  
23 connection with the arbitration against RSI?

24 A. I don't.

25 Q. I believe I asked this. Page 19, is

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2 that your signature?

4 Q. Prior to your signing this document,  
5 did you read it?

6 A. Yes.

7 Q. And when you read it, did you believe  
8 that the statements made in this document were  
9 true?

10           A.       To the best of my knowledge at the  
11       time, yes.

Q. I'll direct your attention to page 2?

13 MR. HARRIS: Of the December 11th,  
14 2002 document?

15 MR. HELLER: Of Plaintiff's Exhibit  
16 4.

17 Q. And in particular, the preliminary  
18 statement?

20 Q. Now in that first paragraph, the  
21 third to last line that begins, Respondents'  
22 fraudulent misrepresentations and material  
23 omissions concerning Claimants' employment."

24                           Were you concerned that making  
25 statements or allegations against respondents'

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2         fraudulent representations and material  
3         omissions would violate the non-disparagement  
4         provisions of claimant's agreement?

5                           MR. HARRIS: Objection to the form of  
6         the question. You only read part of the  
7         sentence. It continues.

8                           MR. HELLER: Okay, I'll read the  
9         whole thing.

10          Q.        "Respondents' fraudulent  
11         misrepresentations and material omissions  
12         concerning Claimants' employment, compensation  
13         and equity interests in Robertson Stephens; and  
14         Fleet's breach of its fiduciary duties as  
15         majority shareholder of Robertson Stephens."

16                           Do you see that sentence?

17          A.        Yes.

18          Q.        Were you concerned that making  
19         allegations regarding fraudulent  
20         misrepresentations and material omissions, and  
21         that references respondents, that references  
22         Fleet and Robertson Stephens, were you concerned  
23         that these claims would violate the  
24         non-disparagement provisions of the parties'  
25         deferred compensation plan?

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2 MR. HARRIS: Objection to the form of  
3 the question.

4 Q. If you understand, you can answer it.

5 A. First, this is a -- and I don't  
6 believe that as a matter of law, public policy,  
7 that a pleading that is made in good faith,  
8 violates a non-disparagement agreement.

9 Second, as I told you, our analysis  
10 that the non-disparagement agreement did not  
11 apply to this situation because there had been a  
12 change of control.

13 So was I, in reviewing this document,  
14 concerned it would violate a non-disparagement  
15 agreement, the answer was no.

16 And there was -- in my recollection,  
17 there was never any response to this document  
18 that said that either this sentence or the  
19 contents of this document were a violation of  
20 the non-disparagement agreement.

21 Q. Are you referring to like the term  
22 absolute privilege, are you familiar with that?

23 A. Yes, of course I am.

24 Q. And so if I understand your  
25 testimony, as a pleading, there's an absolute

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2 privilege with respect to a pleading and the  
3 allegations therein?

4 A. There is. I put in an additional  
5 standard, which is that these allegations were  
6 made in good faith.

7 Q. And the absolute privilege attaches  
8 to the pleading when it's filed with the  
9 arbitration forum or a court?

10 A. Correct.

11 Q. Are familiar with Susanne Craig?

12 A. Yes.

13 Q. Who is she?

14 A. She's a reporter. She's out with The  
15 New York Times. At this point in time, she was  
16 on the investigative reporting team for the  
17 securities industry of The Wall Street Journal.

18 Q. Do you recall the first time you --  
19 have you ever met Susanne Craig?

20 A. Yes.

21 Q. Do you recall the first time you met  
22 her?

23 MR. HARRIS: Objection to the form of  
24 the question.

25 A. Not precisely. She was working

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2             for -- helping out Charlie Gasparino, writing  
3             articles about the analyst scandal, and Charlie  
4             Gasparino was covering a wide variety of cases  
5             that we had that involved -- involved that  
6             scandal.

7             Q.     At the time, was she working for The  
8             Wall Street Journal?

9             A.     Yes.

10            Q.     And was that before the statement of  
11            claim was filed in about December 11th, December  
12            12th, 2002?

13            A.     She was working at The Wall Street  
14            Journal at the time the statement of claim was  
15            filed and prior to that, yes, yeah.

16            Q.     Had she written other articles prior  
17            to the filing of the statement of claim  
18            regarding cases you were working on?

19            A.     I don't know whether she had a byline  
20            on prior cases, but I think she may have had  
21            either a co-byline or written an article or two  
22            and, certainly, she wrote articles after this,  
23            as well.

24            Q.     Did Ms. Craig write an article about  
25            the claimants' arbitration against RSI?

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2                         A.       She, as I understand it, I can only  
3                         take this from the actual byline, she coauthored  
4                         an article with John Hechinger.

5                         Q.       Do you know when she wrote that  
6                         article -- co-wrote that article with  
7                         Mr. Hechinger?

8                         MR. HARRIS: Objection to the form of  
9                         the question. Do you want him to answer  
10                        when she actually wrote it?

11                        MR. HELLER: Strike that.

12                        Q.       Did you speak with Ms. Craig about  
13                        the litigation against RSI prior to the filing  
14                        of the litigation?

15                        A.       I don't think so.

16                        Q.       Did anyone from your office speak  
17                        with Ms. Craig about the litigation prior to the  
18                        filing of the litigation?

19                        A.       I don't think so.

20                        Q.       Do you recall instructing anyone from  
21                        your office to speak with Ms. Craig about the  
22                        litigation, prior to the filing of the  
23                        litigation?

24                        A.       I don't think so.

25                        Q.       Do you recall speaking to anyone

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2                         about contacting The New York Times about the  
3                         litigation, prior to the filing of the  
4                         litigation?

5                         A.      It's possible, but I don't -- I don't  
6                         have a recollection specifically of anything  
7                         with regard to The New York Times with regard to  
8                         this matter. But it's possible someone got it  
9                         over there.

10                        MR. HELLER:  Mark this 5.

11                        (Plaintiff's Exhibit 5, a printout of  
12                        a Wall Street Journal article, marked for  
13                        identification, as of this date.)

14                        Q.      Mr. Liddle, placed before you is a  
15                        document that has been marked as Plaintiff's  
16                        Exhibit 5 for identification.

17                        A.      Right.

18                        Q.      And it was previously marked as  
19                        Defendant's 6 at the deposition of Michael Barr.  
20                        Do you recognize this document?

21                        A.      This is a printout, I believe, of the  
22                        article that appeared in The Wall Street  
23                        Journal.

24                        Q.      Do you recall when this article was  
25                        published, did you read it at or around the time

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2 it was published in The Wall Street Journal?

3           A.       Yeah, I'm sure I did. I don't -- I  
4       see here there's an update there on December 12,  
5       at 12:28 a.m., I don't know whether or not this  
6       was published on their electronic platform or it  
7       was published in the paper.

8 Q. I'll turn your attention to page 2 of  
9 Plaintiff's Exhibit 5, the last paragraph?

10 A. Yes.

11 Q. And it says and I'll quote, "Jeffrey  
12 Liddle, a lawyer in New York who is representing  
13 the group, says the executives are seeking  
14 damages from FleetBoston, including back pay for  
15 2002 and compensation for what he estimates to  
16 be their \$45.6 million equity interest in  
17 Robertson, which was approximately 23%  
18 employee-owned. Mr. Liddle asserts that the  
19 bank's actions during the sale process drove  
20 down the value of the employees' stake in  
21 Robertson and damaged their reputations."

22 Do you see that?

23 A. I see that, yes.

24 Q. Now the article, the authors  
25 mentioned that you say the executives are

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2 seeking damages.

3                   Do you recall saying that to the  
4                   authors?

5           A.       I did not speak to either one to have  
6 any substantive comment whatsoever. I believe  
7 that the use of the word "says" there is a  
8 reference to the contents as, shall we say,  
9 simplifying by the reporter or reporters  
10 themselves.

11 There was a reason -- there was a  
12 reason that -- that this was given to Sue Craig.

13 Q. What was the reason it was given to  
14 Sue Craig?

15           A.     Because I had much experience with  
16     the press over a long time period, and John  
17     Hechinger was not part of the investigative team  
18     of The Wall Street Journal.   He was located in  
19     Boston.

20 And he was basically owned by the  
21 company's up there. So he was like an outside  
22 version of their press relations department.

23 And The Wall Street Journal is  
24 organized so that if a reporter has jurisdiction  
25 and he would have just general jurisdiction of

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2 covering Fleet or what have you, that they get  
3 first crack at anything, unless it's already in  
4 the house.

5 And Sue Craig was in the  
6 investigative reporting area with somebody who I  
7 thought was a very, very straight shooter, and I  
8 didn't want to have Fleet give them a press  
9 release on this that was going to poison the  
10 coverage of the entire thing.

11 I didn't want to have Fleet do what  
12 has been done in numerous prior occasions, not  
13 necessarily with Fleet, but to set up a story  
14 that then gets attributed to people that is  
15 inaccurate.

16 And I called Sue Craig and I said I  
17 want to let you have a copy of the statement of  
18 claim when it's filed because I don't trust John  
19 Hechinger to write a balanced story on this.  
20 That's why it went to her.

21 And all of these other words in here,  
22 I never used the word sabotaged. I don't know  
23 where that came from, but I had -- that was the  
24 entirety of my discussion.

25 And so when I saw that the article

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2        was bylined by both of them, I had a feeling  
3        that it was going to have at least a balance to  
4        it.

5                           And as you see, there are some pretty  
6        juicy quotes from Fleet, which I think would  
7        have been somewhere, in essence, exactly that.  
8        But no other, prior to the article, and it would  
9        have happened immediately. Fleet was always in  
10      the press.

11                          The people who were involved in this  
12        were in the press. The closing of Robertson  
13        Stephens was in the press. It was an  
14        unprecedented situation on how they closed it.

15                          And I didn't want to have a situation  
16        develop where our clients would be disparaged by  
17        a multibillion dollar enterprise, having a vast  
18        P.R. network and utilizing a reporter, who's a  
19        general reporter who won't get another story if  
20        they get criticized.

21                          Q.     There's a lot in that answer.

22                          A.     Excuse me?

23                          Q.     There was a lot in that answer. I'm  
24        going to try to break it down as best as  
25        possible.

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2 You mentioned there was a reason why  
3 it was given to Susanne Craig. Who gave it to  
4 Susanne Craig?

5 A. Sent by somebody in our firm to Sue  
6 Craig.

7 Q. And it was sent after it was filed?

8 A. I believe so, but that was -- that  
9 was the expectation.

10 Q. You mentioned something about a press  
11 release. What do you mean by press release?

12 A. I think what I said was that I didn't  
13 want to have them proceed by a press release,  
14 which is they put out, if you look at them on  
15 the Internet, at the time they were putting out  
16 10 or 15 stories a day.

17 They got sued. They characterized  
18 it. When they closed Robertson Stephens, they  
19 characterized it. When they would dress  
20 themselves up to be acquired, they would  
21 characterize what they were doing.

22 They were a press machine because  
23 they were almost the equivalent of a rollup of  
24 banks seeking to be acquired.

25 Q. So it was their press release you're

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2 referring to, not a press release from Liddle &  
3 Robinson?

4           A.       I don't believe there was a press  
5 release, but I'm, you know, I don't know. There  
6 might have been something, you know, later on  
7 the next day or so.

8                   But when The Wall Street Journal gets  
9 a story, The New York Times is not going to  
10 publish it. I mean unless it's, you know,  
11 Hillary Clinton has been elected president.

12 So the concern here was that John  
13 Hechinger would write whatever they wanted him  
14 to write because that's the history with them,  
15 long-standing history with them.

16 Q. So it's your position that the  
17 alleged quotes of you --

A. They're not quotes of me.

19 Q. The alleged statements made by you  
20 did not come from you?

21           A.       I did not say anything more to Sue  
22        Craig other than I don't want Hechinger to write  
23        an article that Fleet tells him to write.

Q. After you read this article, did you call Susanne Craig to discuss the statements

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2                         that were attributed to you?

3                         A.      No, because I don't see statements  
4                         being attributed to me. I see that being a way  
5                         a reporter summarizes what's in the statement of  
6                         claim. That's what I see.

7                         Q.      So you believe they had copies of the  
8                         statement of claim before they wrote the  
9                         article?

10                        A.      I would think that they did because  
11                        it starts out with "Now, in an arbitration"...

12                        Q.      And do you know how they got the  
13                        statement of claim?

14                        A.      I'm sure that we gave it to them.

15                        Q.      After the arbitration was filed?

16                        A.      I don't know, okay, and I don't think  
17                        it makes a big -- a bit of difference because it  
18                        doesn't become less absolutely privileged  
19                        because it's 2 minutes later.

20                        Q.      How about two days later?

21                        A.      I don't think it becomes less  
22                        absolutely privileged. The statement of claim,  
23                        I believe, was filed on or about December 11th  
24                        and this article was on or about December 12th.

25                        Q.      So giving a statement of claim a day

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2                         or two before the filing of the statement of  
3                         claim, in your opinion, keeps the privilege of a  
4                         document?

5                         MR. HELLER: Strike that.

6                         Q.       Giving a statement of claim to the  
7                         press two days before it's filed does not remove  
8                         its absolute privilege?

9                         A.       I don't understand where you're  
10                        question is going with regard to the facts here.  
11                        So I think you're asking me to give you some  
12                        sort of a legal opinion.

13                        I believe that the filed arbitration  
14                        demand has an absolute privilege. I said that  
15                        this document seemed to me to summarize in short  
16                        form things that are in the statement of claim,  
17                        with the exception of the only word that anybody  
18                        from Fleet ever took exception to, which was  
19                        during the arbitration hearing, which is the  
20                        word sabotage, which is clearly not a word that  
21                        either I used or was in the statement of claim.

22                        And the stuff that you're referring  
23                        to with regard to my comments, I don't think  
24                        that attributing this to me as summary of what's  
25                        in here is in any way even remotely disparaging.

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2 And, you know, I don't -- I'm not sure what is  
3 meant by the -- by your view of disparagement.  
4 It certainly doesn't sound like anything I've  
5 ever heard from Fleet.

6 Q. Does your firm send drafts of  
7 pleadings, before they're filed, to the press  
8 before they're filed?

9 A. Excuse me?

10 Q. Has your firm ever sent drafts of  
11 pleadings to the press before they're filed?

12 A. I don't know how to answer that  
13 question because I'm an attorney, and I think  
14 you're asking a question about a specific  
15 matter; is that correct?

16 Q. I mean in general, does your firm --

17 A. In general, I would say that, you  
18 know, how we practice law on a general basis may  
19 or may not be -- has any relevance. I can't  
20 answer your question.

21 Q. In this case against Robertson  
22 Stephens, did your firm send a draft of the  
23 pleadings to the press before they were filed?

24 A. I don't think so, but you either  
25 refresh my recollection, it's been 14 years ago.

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2                 Q.      Whose decision in the firm would it  
3                be to send a draft of a pleading in this case?

4                 MR. HELLER: Strike that. We'll show  
5                you the document.

6                         (Plaintiff's Exhibit 6, a document  
7                dated December 10, 202 from  
8                Christine Palmieri to Susanne Craig of The  
9                Wall Street Journal, marked for  
10               identification, as of this date.)

11                Q.      Mr. Liddle, placed before you is a  
12               document dated December 10, 202 from  
13               Christine Palmieri to Susanne Craig of The Wall  
14               Street Journal.

15                         It was produced by your counsel in  
16               response to discovery. And it appears to have  
17               two attachments which were printed out in Word  
18               documents, a statement of claim and a press  
19               release.

20                         Have you ever seen this document  
21               before?

22                A.      I'm just taking a look. As to the  
23               cover e-mail, I have no recollection.  
24               Obviously, I would have seen every, probably,  
25               let's not say every, but many of the iterations

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2 of the statement of claim. I don't know whether  
3 this is the final or there's some changes to it.  
4 Obviously, it's not signed.

5 As to the press release, I would  
6 assume that I've seen it, but I have -- have no  
7 recollection of it other than giving it to -- I  
8 certainly haven't seen it in years.

9 Q. Did you instruct Christine Palmieri  
10 to send a draft of the statement of claim and  
11 press release to Ms. Craig?

12 A. I think that the letter says that  
13 attached is the statement of claim without  
14 exhibits, not a draft.

15 Q. Did you instruct --

16 A. And I probably said to her, I'd be  
17 only guessing, something along the lines of can  
18 you send something to -- can you send it to Sue  
19 Craig.

20 Q. When you say, "it," what are you  
21 referring to?

22 A. The statement of claim.

23 Q. Did you instruct Christine Palmieri  
24 to send the attached press release to  
25 Susanne Craig?

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2                 A. I don't know. I don't know and I  
3                don't remember whether or not the press release  
4                -- a press release was ever issued on this. As  
5                you see, I'm not referenced on this, so I don't  
6                know.

7                 Q. Now Ms. Palmieri refers it a  
8                telephone conversation with Jeffrey Liddle.

9                         Do you recall the conversation that  
10               she's referring to that you had with  
11               Susanne Craig?

12                A. Yes.

13                Q. Please tell me about that?

14                A. I already did.

15                Q. So it was a conversation that you had  
16               on or prior to December 10, 2002?

17                A. I only had -- well, it must have been  
18               that day. I only had, I believe, one  
19               conversation with her about this matter. That  
20               is Sue Craig.

21                Q. Did you have any communication with  
22               her about this matter other than by telephone?

23                A. I don't think so.

24                         (Plaintiff's Exhibit 7, an e-mail  
25               from Susanne Craig to Jeffrey Liddle dated

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2 December 12, 2002, marked for  
3 identification, as of this date.)

4 Q. Mr. Liddle, placed before you is a  
5 document marked as Plaintiff's Exhibit 7 for  
6 identification.

7 It appears to be an e-mail from  
8 Susanne Craig to Jeffrey Liddle dated December  
9 12, 2002.

10 Is that your handwriting in the upper  
11 right-hand corner?

12 A. It is, and it does refresh my  
13 recollection that I called her to say that I had  
14 seen the article. I left it as a voice message  
15 and then she sent me this e-mail.

16 Q. Do you recall specifically what you  
17 said to her in the Voicemail message?

18 A. I think I said I thought it was a  
19 nice job. I was a little surprised at the  
20 reaction from Fleet that was set forth.  
21 Something along those lines.

22 And I took the -- her reference about  
23 hubris and delusional hubris being her reference  
24 probably to the -- this Mahoney quote, the good  
25 faith -- the attempt to strike a good faith deal

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2                           with the management team.

3                           Q.         Let's go back to Plaintiff's Exhibit  
4                           6.

5                           Why was the statement of claim and  
6                           press release sent to Susanne Craig on December  
7                           10th?

8                           MR. HARRIS: Been asked and answered.

9                           MR. HELLER: No, it hasn't.

10                          A.         I only had a phone conversation with  
11                           Suzanne Craig on the 10th, at which point she  
12                           asked when she could get the, you know,  
13                           statement of claim.

14                          And apparently I said it would be  
15                          filed on the 11th, and I believe she wrote her  
16                          article on the 12th. So I think that she wanted  
17                          to have a chance to read it and certainly wanted  
18                          to get -- pursuant to my request, that she got  
19                          ahead of John Hechinger in line to write the  
20                          article.

21                          I told you about Hechinger's, let's  
22                          say that it's an open secret throughout the  
23                          entire world of the press.

24                          Q.         Was there a strategic purpose in  
25                          connection with this case against RSI to have

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2 the press write an article about it?

A. Was there a strategic purpose? The  
press was writing articles, including this guy  
Hechinger or writing articles that were very  
negative toward members of the Robertson  
Stephens group. Very negative toward what they  
did, what they performed, how they had  
contributed, whether they were profitable or  
not, issues of their performance.

11                   Their individual performance was very  
12                   important as far as a bonus case would be  
13                   concerned, as these banks like to think that  
14                   they're paying for performance.

15 And in this case, it was focused  
16 primarily on the bonus and on the value of the  
17 equity, which we believe very strongly they had  
18 destroyed overnight and being literally at the  
19 -- on the day that the closing documents would  
20 be signed, they pulled the plug on the deal and  
21 terminated everybody.

22 Not everybody in our group had been  
23 invited to participate in the new firm.

24 Frankly, I don't remember whether Michael Barr  
25 was one of the participants, but certainly the

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2 vast, vast majority were going to be  
3 participants in that, so it came as a shock.

4                   They made a lot of claims at the time  
5                   as to Robertson Stephens that would diminish the  
6                   value of equity in Robertson Stephens, and  
7                   definitely diminish the prospect for receiving  
8                   bonus compensation. So that had been going on  
9                   for months.

10 And that if there's a strategic  
11 reason, yes, you want to have at least a minimal  
12 fair claim out there.

13 Q. Was that strategic purpose discussed  
14 with the members of the claimant group?

15           A.       I'm sure it was discussed with some  
16       of them, yes.

17 Q. How are you sure?

18           A.       Because I know that I had people  
19       commenting to me about what was going to happen  
20       with John Hechinger just writing an article  
21       about that.

Q. Who commented to you?

A. I don't remember specifically.

24 Q. Were they members of the claimant  
25 group?

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2 A. Yes, I believe so.

3 Q. Who did you talk to the most out of  
4 the members of the claimant group?

5 A. It was different people at different  
6 time periods within the claimants.

7 Q. You didn't talk to all 41 of them;  
8 correct?

9           A.     Well, at sometime or another, I spoke  
10        to everyone. Whether I spoke to them, you know,  
11        specifically about their claims or not, that was  
12        not feasible in the circumstance.

13 Q. But you spoke to more of them -- you  
14 spoke to some of them more than others; correct?

15           A.       Yes, but we also held these  
16       conference calls, etcetera, for anybody who's in  
17       the firm is involved in it.

18 Q. Do you have a recollection of a  
19 conference call where the strategic purpose of  
20 using the press was discussed?

21           A.       I don't have a recollection of a  
22 conference call where that happened.

23 Q. Do you have a recollection of  
24 discussing the use of the press with attorneys  
25 in your office in connection with this matter?

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2 A. In connection with this matter?

3 Q. Yes.

4 A. Probably. I don't have a  
5 recollection, per se, but I'm sure there were  
6 probably discussions.

7 MR. HELLER: Let's take a few minute  
8 break, about 5 minutes, and we'll get back.

9 (Brief recess taken.)

10 FURTHER EXAMINATION

11 BY MR. HELLER:

12 MR. HELLER: Read back the last  
13 question and answer.

14 COURT REPORTER: "Do you have a  
15 recollection of discussing the use of the  
16 press with attorneys in your office in  
17 connection with this matter?"

18 Answer: "In connection with this  
19 matter?"

20 Question: "Yes."

21 Answer: "Probably. I don't have a  
22 recollection, per se, but I'm sure there  
23 were probably discussions."

24 Q. I don't know if I asked this, but do  
25 you recall having a discussion with any members

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2                         of the claimants group regarding use of the  
3                         press in connection with this matter?

4                         A.      At what time?

5                         Q.      Prior to The Wall Street Journal  
6                         article.

7                         A.      Well, I -- I couldn't tell you  
8                         specifically who it was, but as I described  
9                         earlier, I believe there were discussions  
10                        leading up to this that included -- included  
11                        where they were initiated by me or initiated by  
12                        people in the group about the kind of -- I don't  
13                        whether they were initiated by me or initiated  
14                        by claimant, but there were people who were as  
15                        concerned as I was about --

16                        Q.      Do you know if Mr. Barr took part in  
17                        those discussions?

18                        A.      I don't.

19                        Q.      Turning to Plaintiff's Exhibit 6,  
20                        which is the e-mail from Christine Palmieri to  
21                        Susanne Craig?

22                        A.      Yes.

23                        Q.      And the last two pages contain a  
24                        document that is called a Press Release.

25                        Did you draft this press release?

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2           A.       No, I told you I didn't even really  
3        recollect this press release until, you know,  
4        you showed it to me today.

5 It makes sense that there was a press  
6 release, as the transmittal says, "as well as a  
7 press release," but I didn't draft it.

8 Q. Do you recall authorizing the  
9 creation of a press release in connection with  
10 this matter?

11 A. I don't recall that.

12 Q. Who from the firm, other than you,  
13 would have authorized a press release in  
14 connection with the Robertson Stephens matter?

15                  A.        Authorized a press release?

16 Q. Yes.

17           A.     It would be unlikely that it would be  
18     somebody else. On the other hand, over many  
19     years of protesting that I should coordinate all  
20     press contents on every subject, that's one of  
21     those rules that's broken more often than not.

22 Q. We'll take it back to 2002, however.

23                   Was there a conflict -- I'm missing a  
24 few words --

25 A. I don't remember any conflict. I

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2       just don't remember whether or not this press  
3       release -- I didn't recollect it, and I  
4       certainly don't recollect whether one was  
5       actually sent out.

6       Q.     Okay, but you have no reason to  
7       believe that one was not sent to Susanne Craig?

8       A.     I have no reason to believe one way  
9       or the other. All I can do is say is I believe  
10      this and it sounds like one was sent.

11      Q.     Did you have any discussions with  
12      Christine Palmieri about the e-mail that she  
13      sent to Susanne Craig?

14                  Do you recall any conversations you  
15      had with her?

16      A.     No, and as I told you before, I'm not  
17      copied on it so --

18                  MR. HELLER: Mark this 8.

19                  (Plaintiff's Exhibit 8, an e-mail  
20      from Christine Palmieri to Susanne Craig  
21      dated December 10, 2006 at 6:11 p.m. with an  
22      attachment, marked for identification, as of  
23      this date.)

24      Q.     Mr. Liddle, placed before you is a  
25      document that's marked as Plaintiff's Exhibit 8

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2 which appears to be an e-mail from

3      Christine Palmieri to Susanne Craig dated

4 December 10, 2006 at 6:11 p.m.

5 And the document attaches a revised  
6 press release with the statement, "Please  
7 discard the version e-mailed to you earlier."

8                   Have you ever seen this document  
9 before?

10           A.       I might have, but I have absolutely  
11           no recollection of it.

12 Q. Do you recall any conversations that  
13 you had with Ms. Palmieri regarding a revised  
14 press release sent to Ms. Craig on December  
15 10th?

16           A.       I don't have any recollections of  
17       a -- of the original or a revision of this, much  
18       less any conversations about it.

19 Q. Do you recall having discussions  
20 prior to December 12, 2002 with any of the  
21 members of the claimant group regarding use of  
22 press releases in connection with this matter?

23           A.       No, and I don't have any recollection  
24        of actually having sent a press release.

25 Q. Were any copies of the statement of

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2 claim sent to any other newspapers before it was  
3 filed?

4 A. I don't know.

5 MR. HELLER: Mark this.

6 (Plaintiff's Exhibit 9, a time  
7 sensitive memorandum marked URGENT from to  
8 JLL from CAP dated 12/10/2002, marked for  
9 identification, as of this date.)

10 Q. Mr. Liddle, placed before you is a  
11 document that's marked as Plaintiff's Exhibit 9  
12 for identification. It's a time sensitive  
13 memorandum marked URGENT from to JLL from CAP  
14 dated 12/10/2002.

15 Do you recognize the handwriting on  
16 this document?

17 A. I don't recognize URGENT. I  
18 recognize to CAP, that's Christine A. Palmieri.  
19 That's my handwriting. Yes, looks to me to be  
20 my handwriting.

21 The circle with the arrow, I have no  
22 idea why that's there, "give her background, but  
23 no opinion." Can I read it?

24 Q. Yes.

25 A. Okay.

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1                         J. L. Liddle

2                         Q.     Do you recall -- do you recognize  
3                         this document?

4                         A.     I don't recognize the document, but I  
5                         recognize my handwriting in places where it is.

6                         Q.     Do you recall receiving a time  
7                         sensitive memorandum from CAP regarding  
8                         Robertson Stephens in about December 10, 2002?

9                         A.     I just answered that question.

10                        Q.     I want to make sure we're clear.

11                        A.     You're referring to Exhibit 9 again  
12                        and the answer is the same as it was a minute  
13                        ago.

14                        Q.     Just making sure I have it right.

15                        Do you know why you would tell  
16                        Ms. Palmieri to give Ms. Craig background and no  
17                        opinion?

18                        A.     Yeah.

19                        Q.     Why?

20                        A.     Because I wanted the only information  
21                        that would go out of our office about this case  
22                        to be consistent, and that would be the contents  
23                        of the statement of claim.

24                        Q.     The document speaks of --

25                        MR. HELLER: Strike that.

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1                           J. L. Liddle

2                           Q.     Was the press release consistent with  
3     the statement of claim?

4                           A.     I haven't had a chance to read either  
5     press release and compare it to the statement of  
6     claim.

7                           Q.     The memorandum speaks of the fact  
8     that Ms. Palmieri did not tell Ms. Craig that  
9     you, Jeff Liddle, want to hand deliver a copy to  
10    Gretchen Morgenson at The New York Times.

11                          Who is Gretchen Morgenson at The New  
12    York Times?

13                          A.     She was a financial page reporter who  
14     was in the process of covering a number of  
15     stories related to cases that we had.

16                          Q.     Why were you delivering another copy  
17     to Gretchen Morgenson?

18                          A.     I would presume because at the time,  
19     we had a very strong relationship with her and  
20     we wanted to know if they had an interest in  
21     covering this.

22                          Q.     Did she have any relationship with  
23     the co-author of Ms. Craig's article?

24                          A.     Not that I know of. She worked for a  
25     different entity.

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1                         J. L. Liddle

2                         Q.       So delivering the statement of claim  
3                         to Ms. Morgenson did not have the ability to  
4                         counteract anything that this Boston-based  
5                         author was say?

6                         A.       It was probably best stated that it  
7                         was not going to be something interesting to The  
8                         New York Times because Fleet was in Boston;  
9                         Robertson Stephens was in San Francisco, you  
10                        know, it closed down, but that's because we had  
11                        a very strong relationship with  
12                        Gretchen Morgenson, as well as many people,  
13                        journalists. They were always having issues  
14                        that they felt one was getting the scoop or not.

15                        Q.       Did you tell Ms. Craig that we're  
16                        also sending the statement of claim to The New  
17                        York Times?

18                        A.       I don't know. From this memo, it  
19                        looks like maybe not, but I don't know.

20                        Q.       Did Ms. Craig find out after the fact  
21                        that the statement of claim you also gave to The  
22                        New York Times?

23                        A.       I don't know. I have no idea. I  
24                        don't recollect The New York Times getting  
25                        anything by way of --

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1                         J. L. Liddle

2                         Q.       How do you normally communicate --

3                         MR. HELLER: Strike that.

4                         Q.       In 2002, how did you communicate with  
5                         your colleagues at Robertson Stephens -- at  
6                         Liddle & Robinson?

7                         MR. HARRIS: Objection to the form of  
8                         the question.

9                         A.       How did I communicate with them?

10                        Q.       Was it memoranda --

11                        A.       It was all verbal communication. And  
12                        by verbal, I mean in its actual sense.

13                        Q.       Did you communicate by e-mail?

14                        A.       I guess sometimes. I'm not a typist.  
15                        I'm the last -- the last year where not typing  
16                        was a virtue. It cost me a lot of money in  
17                        college, in law school to hire typists.

18                        But I don't type very well, as you  
19                        can see from the Blackberry. So e-mails are not  
20                        my thing.

21                        Q.       So mostly communications were verbal  
22                        with your colleagues?

23                        A.       Oral. Verbal would include  
24                        everything.

25                        Q.       Right, so oral communications, were

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2       they followed up with memoranda?

3       A.     Written by me?

4       Q.     Yes.

5       A.     Very infrequent.

6       Q.     Did your colleagues follow up with  
7                           memoranda to you to confirm conversations kind  
8                           of like what Ms. Palmieri did?

9                           MR. HELLER: Strike that. She didn't  
10                          do that in connection with conversations, so  
11                          bad question.

12       Q.     Did your colleagues follow up with  
13                          written memoranda to you to set forth the  
14                          substance of conversations that you two had?

15       A.     You're not referring to 9 now?

16       Q.     I'm not I'm referring to -- I'm  
17                          referring generally and back in 2002?

18       A.     I guess sometime, but I would say  
19                          that this is not a -- it's not like a mandated  
20                          protocol. It's a relatively small firm.

21       Q.     Prior to the filing of the statement  
22                          of claim, did anyone from your firm investigate  
23                          whether all the claimants had the same claims,  
24                          the same type of claim?

25       A.     Yes.

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1 J. L. Liddle

2 Q. Did all of the claimants have the  
3 same types of claims?

4           A.     Well, it's a very complicated  
5 question. The answer is that not everybody had  
6 every claim, but later on, it became even more  
7 diverse than that.

8 Q. Did you discuss with any members of  
9 the claimant group about having conflict waivers  
10 executed?

11           A.       I don't remember. But that issue  
12       only arose in the context that was completely  
13       dictated by New York's Code of Professional  
14       Responsibility at the time, and we observed  
15       that.

16 Q. So is it your belief that at the time  
17 this statement of claim was filed, there was no  
18 need to get conflict waivers under the New York  
19 State Code of Professionalism?

20           A.       None of them were suing each other  
21       and none of them had any issue of if this one  
22       got such and such, that that was taking it from  
23       one of the other claimants.

24 So the answer is no, and there was  
25 no -- no conflict as far as I can tell.

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1                         J. L. Liddle

2                         Q.       Did later on during the course of  
3                         your representation, did a conflict arise among  
4                         the members of the claimant group?

5                         A.       It arose in a way that I had  
6                         mentioned earlier at the point of the settlement  
7                         offer.

8                         Q.       What was that settlement offer?

9                         A.       The settlement offer made by Fleet to  
10                        then Banc of America to settle the case.

11                        Q.       Do you recall when that offer was  
12                        made?

13                        A.       I know it was fairly late into the  
14                        process. I'm trying to remember whether it was  
15                        just before summations or -- but it was fairly  
16                        late into the process.

17                        Because I remember trying to evaluate  
18                        it and talking to people and I believe, although  
19                        I don't believe handled the direct  
20                        communication, I may have, I believe that their  
21                        client was a person who because of his  
22                        reluctance to agree to how that should be  
23                        handled, that we were unable to accept the  
24                        settlement offer.

25                        Q.       Was it only my client that you had

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1                         J. L. Liddle

2             any problem with how settlement would be  
3             handled?

4             A.     No, there were people who had  
5             problems with it because of what your client  
6             wanted, and they had problems with his claim  
7             dictating the result of the settlement because  
8             of it.

9             Q.     Were there others whose deferred  
10            compensation, who had the same problem in that  
11            my client had with regards to the settlement --

12            A.     Not that I'm aware of, but you know,  
13            the issue arose in the context of there being,  
14            by the time we're getting to that stage, I think  
15            as many as 9 different claims that an individual  
16            could have. I'm not sure that anybody had more  
17            than 7, but a direct match of this claim and  
18            your claimant's claim was almost nonexistent.

19                        There were maybe a couple who had  
20            just this or that, but then the same -- same  
21            claims were held by somebody else.

22                        So the Banc of America only wanted to  
23            offer a lump sum. And a conflict waiver that  
24            you were talking about earlier would have gotten  
25            no bearing whatsoever on issue that arose, so

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2 don't confuse that.

3 The issue was New York had a very  
4 specific rule with regard to multi-client  
5 representations as to what the lawyer could do  
6 in accepting a general settlement proposal.

7 The lawyer could not accept the  
8 general settlement proposal, and we asked them  
9 repeatedly to make individual offers which was  
10 what we had to do in New York.

11 They were under the model code in  
12 Massachusetts, and they refused to do it because  
13 the model code would allow the acceptance of a  
14 general settlement proposal, and then the fun, I  
15 guess, would begin between the lawyer for the  
16 various claimants and the claimants. I'm saying  
17 that factiously because it's not fun at all.

18 And so that -- that really is the  
19 issue. Your client wanted to be paid a hundred  
20 percent of his CEP, and that would have been --  
21 on a pro rata basis, that would have been about,  
22 my recollection is maybe two times, something  
23 like that, two times what a pro rata share of  
24 that number would have been, and others felt  
25 that our arbitration, especially with the Boston

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2 case hanging over us and the unwillingness of  
3 Fleet to sign a submission agreement, that this  
4 arbitration was probably -- had a heavy risk of  
5 not resolving these claims like a CEP claim.

6 So they wanted to get their very  
7 sizable bonus claims considered at the front of  
8 the queue, and so there were these groups, and  
9 we were unable to do that.

10 And the result later on was that the  
11 total amount, although it was \$23 million, was  
12 not -- was not as much as the generalized offer  
13 that was provided.

14 Q. Do you have any copies of any  
15 documents relating to the generalized offer that  
16 was made?

17 A. I don't know. I mean I don't -- I  
18 don't think that they put a number in writing,  
19 but the offer -- they did offer \$25 million.

20 If they had a confidentiality  
21 agreement, that definitely is treated as  
22 confidential.

23 MR. HELLER: I think we have a  
24 confidentiality agreement. If not, we'll  
25 look.

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1 J. L. Liddle

2 Q. Did there come a time that RSI sent a  
3 letter to some or all of the claimants canceling  
4 the deferred compensation proposal?

5 A. I have a recollection of that, but I  
6 don't think your facts are completely accurate.

I think that they sent a letter to,  
if I remember correctly, 57 people. 42 of whom  
were our clients and 15 of them were not our  
clients, canceling deferred compensation.

11 Q. Do you recall when that letter was  
12 sent?

13           A.       I'm thinking in the second quarter of  
14       2003 or '04. And there were, and I'm not sure  
15       that this is the first thing because what I'm  
16       thinking is, is that prior to that, they tried  
17       and they wanted to settle the CEP claims.

18                   So chronologically, I feel a little  
19                   comfortable just taking this letter because we  
20                   did not receive -- my recollection is that we --  
21                   oh, okay, this is a letter that I believe had  
22                   with it some other stuff from the rest of this  
23                   stuff.

24 MR. HELLER: Why don't we mark this

**Exhibit 10.**

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1 J. L. Liddle

2 (Plaintiff's Exhibit 10, a document,  
3 marked for identification, as of this  
4 date.)

5 A. The question was did there come a  
6 time when --

7 Q. I'll ask it.

8 A. No, I don't want to leave a  
9 misimpression --

10 Q. Okay.

11 A. -- because I'm -- I had in mind  
12 something different from this. This is not a  
13 letter that we received.

14 Q. Okay.

15 A. It was never sent to us, but this is  
16 a letter that was sent out and I believe went to  
17 all 57 people.

18 Q. Right, and I believe that's what  
19 you're referring to so I'm glad you clarified,  
20 so --

21 A. And this letter I believe had stuff  
22 with it, but I'm not sure.

23 Q. You mentioned some other documents  
24 that -- other than this letter?

25 A. Right.

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1                           J. L. Liddle

2                           Q.     Can you tell me about that document?

3                           A.     Well, what I recollect is, is that  
4 either somebody got this letter, and I now in  
5 Michael's case he got the letter and he made the  
6 call, and I'm fairly certain, from what I heard,  
7 that he made the call prior to talking to us.

8                           He was given an opportunity to get  
9 his CEP if he would give them a general release  
10 of all of his claims in the arbitration and sign  
11 an affidavit that they prepared that, among  
12 other things, stated that he had not disparaged  
13 Fleet.

14                          Q.     How did you find out about that  
15 conversation?

16                          A.     Well, ultimately, he told us. And I  
17 don't think he told me precisely. I think he  
18 told somebody else in the firm who relayed it to  
19 me.

20                          I think there were a couple, not very  
21 many, who made this call. I'm not sure that  
22 there was anybody else who just called without  
23 talking to us first.

24                          Q.     Did you have any reaction to the fact  
25 that this proposal was made to Mr. Barr?

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1

J. L. Liddle

2           A.     I had a reaction to the fact that  
3     they would write a letter to somebody they knew  
4     who was of an adverse interest, that the letter  
5     would be written by and mention their lawyers.  
6     Under New York law and under the model code,  
7     somebody who himself, a lawyer, who directly or  
8     indirectly himself or through another,  
9     communicates with one of adverse interest  
10    without receiving permission of the existing  
11    counsel, has violated a code of professional  
12    responsibility.

13           Q.     Did you or anyone else from your firm  
14    put Fleet or Robertson Stephens or their counsel  
15    on notice of the fact that this was improper?

16           A.     Absolutely.

17           Q.     How were they put on notice?

18           A.     We filed a grievance against them  
19    after asking how they -- why they did this.

20           RQ        MR. HELLER: I want copies of the  
21       grievance that was filed against Robertson  
22       Stephens, Fleet and/or their counsel.

23           A.     It was against their counsel. It's  
24    not McChesney, it was a guy Joe something or  
25    other.

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1 J. L. Liddle

2 MR. HARRIS: The letter, we'll take  
3 it under advisement.

4 A. I'm not sure we can just give out a  
5 grievance.

6 MR. HELLER: We'll figure that out.  
7 Maybe this is a good time to break, have  
8 your lunch and then we'll finish up.

9 (Luncheon recess: 1:01 p.m.)

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1

J. L. Liddle

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A F T E R N O O N      S E S S I O N

3

(Time noted: 1:42 p.m.)

4

J E F F R E Y    L.    L I D D L E ,    resumed and  
testified as follows:

5

CONTINUED EXAMINATION

6

BY MR. HELLER:

7

Q.    Let's go back to Plaintiff's Exhibit  
10, the May 2, 2003 letter.

8

Have you ever seen a copy of the May  
11, 2003 letter either to Michael Barr or to  
12 another one of the other claimants in the RSI --

13

A.    Have I ever seen it before you gave  
14 me --

15

Q.    Yes.

16

A.    Yeah.

17

Q.    When did you first see this document  
18 or one similar to the one that I just placed  
19 before you?

20

A.    I would say shortly after this.

21

Q.    After you received this --

22

THE WITNESS: Maybe we should take a  
23 very, very quick break here.

24

(Brief recess taken.)

25

FURTHER EXAMINATION

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1 J. L. Liddle

2 BY MR. HELLER:

3 Q. So, Mr. Liddle, I direct your  
4 attention to the first paragraph where it  
5 begins, "Please be advised that Robertson  
6 Stephens Group, Inc. ("RSGI") has reviewed the  
7 above plans and agreement and has determined  
8 that you are due no payments or awards of stock  
9 as a result of actions taken in violation of  
10 Section 8.1 of the Cash Equivalent Plans,  
11 Section 4.6 of the Restricted Unit Plan, and  
12 Section 8 of the Restricted Unit  
13 Award Agreement."

14 Do you see that?

15 A. Yes.

16 Q. Do you know what they were referring  
17 to at that time?

18 MR. HARRIS: In reference to what?

19 MR. HELLER: In reference to the  
20 violation.

21 MR. HARRIS: It refers to a lot of  
22 things here.

23 Q. It says you're due no payments or  
24 awards because of a violation.

25 What violation were they referring

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1 J. L. Liddle

2 to?

3           A.       Well, as I said before, these weren't  
4       sent to us. I think by the time that I learned  
5       about this, it was after somebody, whether it  
6       was Michael or somebody else, had called, and as  
7       I said before, there's other -- other documents.

8 There's the affidavit of release and  
9 I think there might have been either just before  
10 or just after this, some other kind of letter.  
11 So it would be a guessing game.

12                   But certainly around the time I first  
13       saw this in the context of other things and  
14       conversations that everybody had, I became aware  
15       that they were talking about this issue of  
16       disparagement.

17 Q. So regarding documents that you  
18 believe were exchanged at or about the same  
19 time, you mentioned an affidavit and some other  
20 documents, I do not believe those were produced  
21 to us, so those that I mentioned previously --

22           A.       They weren't produced to us. They  
23        were sent to him after he called them without  
24        talking to us. So he should have them.

25 MR. HARRIS: He meaning?

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1 J. L. Liddle

2 THE WITNESS: He meaning Michael  
3 Barr.

4 Q. The documents that were sent to  
5 Mr. Barr, have you ever seen a copy of those  
6 documents?

7           A.       I'm not sure if it was Mr. Barr's or  
8       somebody else's, but he certainly would have had  
9       access to them.

10 Q. Do you know for a fact that he got  
11 those documents?

A. I don't know that for a fact.

13 RQ Q. So I ask that you produce the  
14 documents that were given to you by the others  
15 relating to this affidavit and offer --

16           A.     Are you saying that you didn't get  
17       it?

18 Q. I'm not saying anything. Are you  
19 questioning me or am I questioning you?

20           A.     Well, because you're asking me to  
21     search a file that's probably literally hundreds  
22     of linear feet in length for stuff that was 13  
23     years ago that did not become part of our case  
24     with people I'm not sure who actually gave me  
25     this.

1

J. L. Liddle

2

And I'm asking you if you already have them, and why don't we just use yours. So if you tell me that you -- if you're representing to me that he didn't get these things, then that's --

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MR. HELLER: I'm not representing anything. I make my request, and you're

able counsel will determine -- he'll take my request under advisement, just like any other counsel will do, and then when I make the request in writing, we'll have a discussion about it, which we're required to do, and then he will decide whether you have to supply it.

And if we have it, then we'll make a

determination whether you still have to provide it.

MR. HARRIS: Well, all right, we'll

discuss that. I'm not so sure it's relevant to anything.

MR. HELLER: Whatever, and --

Q. Right, so you had mentioned before

this whole discussion about these documents that this is when you found out that an issue of

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1 J. L. Liddle

2       disparagement came up?

3           A.       I believe so. I'm not a hundred  
4       percent sure. I have a very, very vague  
5       recollection of this, but, yes.

6 Q. Okay, so please tell me what the  
7 issue of disparagement was regarding that, what  
8 was the issue?

9           A.     Well, the issue was that they were  
10           asserting that I -- I'm not sure this was in a  
11           document, but it had been said to somebody that  
12           they were asserting that the problem that they  
13           thought existed related to the article in The  
14           Wall Street Journal.

Now I'm not sure whether that was in  
May or in June or whenever, but it was sometime  
after these events started, and that would be  
the first time I ever heard of that.

19 Q. Were there any other issues of  
20 disparagement other than this Wall Street  
21 Journal article?

22           A.     I think there might have been. And  
23       now that you asked the question, there might  
24       have been issues about what people were saying.  
25       I think there were issues -- well, I'm not sure.

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1 J. L. Liddle

2                   But I think that now that you ask the  
3 question, that there may have been other  
4 situations in which they felt they were being  
5 disparaged.

6 Q. As you sit here today, do you have a  
7 specific recollection of those other issues of  
8 disparagement?

9 A. I don't.

10 Q. How did you find out that there was a  
11 specific issue with The Wall Street Journal  
12 article that caused this claim of disparagement?

13           A.       I'm going to say that the best  
14        recollection I have of that was somebody in our  
15        firm mentioned it to me.

Q. But you don't recall who?

A. I would be guessing.

18 Q. After you found out that there was an  
19 issue of disparagement relating to The Wall  
20 Street Journal, did you have any discussions  
21 with the claimant group about that issue?

22           A.       I have a recollection of having had  
23       probably one of those calls.

24 Q. Did you have any discussions with the  
25 lawyers in your office about the issue of

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1 J. L. Liddle

2 disparagement after this May 2 letter was sent?

3           A.     I'm sure we had discussions after May  
4     2, 2003. It's just when and I'm not sure.

5 Q. Did you believe that there was an  
6 issue of disparagement?

7           A.     Well, you've been a lawyer, I guess,  
8       for a few years, so you know that anybody can  
9       say anything about anything and they can then  
10      declare it to be an issue.

11                   But I didn't think that the article,  
12 which incidentally, as I recollect it, was the  
13 print copy of the article, not the one you gave  
14 me earlier -- I didn't think that the article  
15 disparaged Fleet or Robertson Stephens.

16 Q. Did you put that article up on your  
17 website, the Liddle & Robinson website?

18           A.       I don't put anything on the website.  
19       I don't even know --

20 Q. I'll re-ask the question since you're  
21 such a great typist.

22           A.       If I can't type, I'm not posting  
23       things on the website.

24 | Page

25 | Did anyone on behalf of Liddle &

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1                           J. L. Liddle

2       Robinson put the December 12, 2002 Wall Street  
3       Journal article regarding Robertson Stephens on  
4       the Liddle & Robinson website?

5       A.     I don't know.

6       Q.     Do you know if it was ever on your  
7       website?

8       A.     I don't know.

9       Q.     Is there anyone in your office in  
10      charge of the website?

11      A.     Well, whomever was in charge of the  
12      website then, assuming we had a website then,  
13      which is not an assumption that I'm yet ready to  
14      make --

15      Q.     You did.

16      A.     -- that the website, you know, person  
17      here has changed several times. And my best  
18      recollection would be the person who would have  
19      been in the early days of the website left here  
20      in 2012.

21      Q.     Who decides what goes on the  
22      company's website?

23      A.     I don't think there's any one person  
24      who decides what goes on it. I mean there's  
25      certain things that have regularly been put on

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J. L. Liddle  
the website, bios of attorneys, case results  
that are sort of organized in this database of  
-- by subject matter generally, and then I guess  
sometimes there have been articles or references  
to articles, but the website, you know, tended  
to provide information to people about what we  
do.

9                   And since what we do, in large part,  
10                  is become, you know, is very difficult to  
11                  describe just in the traditional term of using  
12                  one word for it, the website helps to clarify  
13                  that.

14 (Plaintiff's Exhibit 11, a letter  
15 from Jeffrey L. Liddle dated May 13, 2003  
16 in reference to Alt against FleetBoston,  
17 marked for identification, as of this  
18 date.)

19 Q. Mr. Liddle, placed before you is what  
20 has been marked as Plaintiff's Exhibit 11 for  
21 identification.

22 It's a letter dated May 13, 2003.  
23 The re is Alt against FleetBoston, and it's a  
24 letter that appears to be from you to the  
25 clients.

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1                           J. L. Liddle

2                           Do you recognize this document?

3                           A.     Let me take a quick look at it here.

4                           I don't recognize the letter, but it's pretty  
5                           consistent with my general recollection that  
6                           I've just described.

7                           Q.     So I'm directing your attention to  
8                           the second paragraph that says, "We believe the  
9                           May 2 letter to be unfounded and merely a heavy  
10                          handed tactic to try to convince you to give up  
11                          on enforcing your rights."

12                          Why did you believe the May 2 letter  
13                          to be unfounded?

14                          A.     Well, because we did not believe that  
15                          any -- anybody had a will there that violated  
16                          Section 8.1 of the cash equivalent plan and the  
17                          other sections, and it was clearly at least from  
18                          the other information that we received, aimed at  
19                          trying to pay what they already agreed to pay  
20                          almost a year earlier so that they could get a  
21                          release from these people of all their other  
22                          claims.

23                          And they asked two questions to be  
24                          put to Elaine McChesney, although it says that  
25                          she's the contact counsel for RSGI, she was the

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1                           J. L. Liddle

2         number two person and we were told was going to  
3         be the trial person representing RSI in the --  
4         in the arbitration.

5                           And Lisa Bisaccia was a primary  
6         witness because she had at least led the  
7         discussion out in California on July 17 or so in  
8         which she informed everybody that there was --  
9         we were told that she informed everyone that  
10       these plans would be paid whether or not they  
11       signed a release.

12                          So, of course, their provision in  
13         the -- in the separation agreement and general  
14         release, that's what they want.

15                          So now months later, they want a  
16         release of all these claims after having said  
17         that they didn't need one, and having time pass  
18         with nothing that appeared to us to violate the  
19         section.

20                          Q.     Earlier on in your answer, you had  
21         mentioned that the claimant had not violated, in  
22         your belief, the non-disparagement clauses?

23                          A.     Correct.

24                          Q.     Are you referring simply to  
25         individual claimants making statements or did

1 J. L. Liddle

2 that include your firm on behalf of the  
3 claimants?

4           A. I wasn't a party to any of these  
5 grievances, but this was a contractual  
6 provision. And the contractual provision by its  
7 own terms was not something that could be  
8 violated in these circumstances. I think I told  
9 you that earlier.

Q. I understand.

11           A.     So that's -- that's a good reason  
12       right off the bat.

13 Q. Okay.

14           A.       I don't think that anything that was  
15        said was -- at any time was disparaging.  
16        Certainly not toward them.

17                   But the fact of the matter is that  
18       disparagement was no longer an issue because the  
19       provision didn't apply in these circumstances.

Q. But that's not answering my question.

21           A. I'm sorry, I thought that is  
22 answering the question.

23 Q. The question is did it make a  
24 difference --

25 MR. HELLER: Strike that.

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1

J. L. Liddle

2

Q. Assume for argument sake that the  
non-disparagement clause was in effect?

4

A. I can't assume that it wasn't.

5

Q. I am for the question. If you made  
the remark or if claimants made the remark,  
would it make a difference?

8

MR. HARRIS: I'm not going to allow  
him to answer that.

10

A. That clause was not in effect.

11

MR. HARRIS: No, no, no, no.

12

Q. Did you represent the claimants?

13

A. You know I represented the claimants.  
I certainly didn't represent them with regard to  
any of these documents at this point in time.

16

Each specifically cited an agreement  
where they had each specifically requested that  
we not represent them with regard to these  
provisions.

20

Q. Did you discuss --

21

MR. HELLER: Strike that.

22

Q. At the end of the letter you speak of  
having a conference call. Did that conference  
call occur?

25

A. I think it did. I don't remember. I

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1 J. L. Liddle

2 have a vague recollection before, that I  
3 described to you, of having had a conference  
4 call.

5 Q. Other than where -- well, do you  
6 recall participating in the conference call?

7           A.     I have a vague recollection of  
8 participating in a conference call in which this  
9 subject was discussed.

10 Q. Who else --

11           A.       I cannot tell you that this was the  
12       only subject because many of these conference  
13       calls cover many, many subjects.

14 Q. I'm not asking whether this was the  
15 only subject.

16 Did any other lawyer from your firm  
17 participate in that conference call?

18 A. I don't recall.

19 Q. Do you recall which of the claimants  
20 participated in the conference call?

21           A.     As I told you before, it would be a  
22       call-in, be on a polycom in our old offices, I  
23       believe, and I would hear a beep when somebody  
24       came on and a beep when they came off. And as  
25       best as I could, I would try to take attendance,

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1                         J. L. Liddle

2                         but the answer to your question is no.

3                         Q.      I was just going to ask you about  
4                         attendance. Was there an attendance sheet?

5                         A.      From time to time, we write down  
6                         notes because we want to make sure everyone was  
7                         secure as possible.

8                         And if there's a beep, we ask. But I  
9                         don't think there was anything that was as  
10                        formal as an attendance sheet.

11                        Q.      Did anyone keep copies of those  
12                        notes?

13                        A.      On that kind of thing, I don't know.  
14                        I doubt it.

15                        RQ                 MR. HELLER: I call for production of  
16                        notes relating to the conference calls that  
17                        occurred.

18                        MR. HARRIS: Send me a letter. It's  
19                        going to be a very long one, and we'll take  
20                        it under advisement.

21                        Q.      Do you know if Michael Barr ever  
22                        expressed concern after the May 3rd, 2003 letter  
23                        about forfeiture of his deferred compensation?

24                        MR. HARRIS: To whom?

25                        MR. HELLER: To members of the firm.

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1 J. L. Liddle

2 A. I remember a brief meeting with him  
3 sometime in 2011, 2012, something like that.

4 Q. Do you recall receiving a memorandum  
5 or receiving a memorandum from JRH relating to  
6 Michael Barr and his concern about the deferred  
7 compensation?

8           A.       I know who JRH is, and he may have  
9           sent me a memo, so show it to me.

10 (Plaintiff's Exhibit 12, a memorandum  
11 to file from JRH dated March 4, 2004,  
12 marked for identification, as of this  
13 date.)

14 Q. Mr. Liddle --

15           A.       Please let me read this. (Witness  
16 reading to himself.) Okay.

17 Q. I've placed before you as Plaintiff's  
18 Exhibit 12, which is a memorandum to file from  
19 JRH dated March 4, 2004.

20                   Do you recognize the handwriting on  
21                   this document?

22 A. Yup.

23 Q. Whose handwriting is it?

A. I believe all of it's mine.

25 Q. Do you recall receiving a copy of

Page 114

1                         J. L. Liddle

2                         this memo to file?

3                         A.      I would say no, although I do  
4                         recognize some of the points that are made, not  
5                         in this format, but as points that were  
6                         discussed.

7                         Q.      On the fourth dot it says, "Says he  
8                         understood when he agreed to file suit in  
9                         November of 2002 that the \$1.3 million was not  
10                        at risk, but wrote us a letter in December  
11                        asking that we defer filing suit until after the  
12                        first deferred comp. payment under the CEP  
13                        schedule for January 15, 2003."

14                        Do you see that?

15                        A.      I see that, yes.

16                        Q.      Is that true?

17                        A.      Is what true, that he said that?

18                        Q.      That he wrote you a letter?

19                        A.      Not that I recollect, no.

20                        Q.      Do you recall any request that the  
21                        suite be deferred until after January 15, 2003?

22                        A.      I really don't.

23                        Q.      Were there any discussions with any  
24                        of the attorneys in your office, prior to the  
25                        filing of the suit, about deferring the lawsuit?

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1 J. L. Liddle

2           A.       Well, I'm not sure I would say  
3 deferring the lawsuit, but the timing, I think  
4 as discussed this morning, there were  
5 discussions prior to filing of the suit.

6 Q. So in the handwriting, the second  
7 handwritten portion on the left side?

8 A. Yup.

9           Q.       It says, "I don't see how we could  
10          have waited and had any leverage."

11 | What are you referring to about that?

12           A.       I'm not sure I remember what the  
13 specific issue was.

14 Q. Well, it's applies to the delay in  
15 filing suit, so --

16           A.       There was a -- there were a couple of  
17       issues that related to what would happen at  
18       year-end 2002.  This is a company that was being  
19       put out of the business.

20 There was an issue as to the  
21 valuation of the equity. There was an issue as  
22 to whether there was a bonus pool.

23                   The company continued to, as  
24 virtually all security firms, where they closed  
25 in the formal sense of stopping doing

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1                           J. L. Liddle

2     essentially new business, terminating all the  
3     employees and winding up, it's not that simple.

4                           It's, you know, they have securities  
5     positions, they have trades out that have, you  
6     know, long dated kind of positions, they have  
7     relationships with counterparties. They can't  
8     necessarily immediately unwind.

9                           They had a retail stock brokerage  
10    division that in and of itself cannot be closed  
11    without the passage of a three-year time period.  
12    You have to file a form called a BDW, which is a  
13    broker-dealer request withdrawal form.

14                          And I know that there were events  
15    that were expected to occur at year-end when  
16    they closed the books on this, that we did not  
17    want to have written in stone, so that we would  
18    have to try to unwind them in addition to doing  
19    everything else in this.

20                         Plus, we had a number of people in  
21    this group who wanted us to go faster rather  
22    than slower.

23                         Q.     Well, so wasn't there a conflict  
24    among the claimants that should have been  
25    addressed?

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2                 A.      There was no real conflict because  
3                 there was no -- no issue relating to what you  
4                 showed me in your May letter at that point in  
5                 time.

6                 Q.      But wasn't there still a risk in  
7                 terms of the vesting and non-disparagement  
8                 provisions?

9                 A.      I believe not. You're going to say  
10                there's a risk as it regards everything, and as  
11                we know as lawyers, no matter how clear-cut  
12                something is, there's always a theoretical risk.

13                On the other hand, I'll say it again,  
14                we didn't see any violation of that Section 8.1.  
15                We didn't think that it applied under these  
16                circumstances. I'd like to finish my answer.

17                THE WITNESS: Would you read back the  
18                question.

19                COURT REPORTER: "But wasn't there  
20                still a risk in terms of the vesting and  
21                non-disparagement provisions?"

22                A.      And everybody who had come to us had  
23                come to us with the same story that it was not  
24                an issue, and that they did not want us to  
25                represent them in respect of that because they

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2        didn't want to pay a fee for something that they  
3        were going to get without -- without a problem.  
4        So that's --

5                           Q.     When analyzing this whole issue, did  
6        you calculate an outside date that the  
7        non-disparagement clause could have applied to  
8        any of the claimants in this case?

9                           A.     I'm trying to be respectful here, but  
10      as a lawyer, I don't understand what you are  
11      even remotely talking about. You mean some  
12      statute of limitations?

13                          Q.     There's a six month period from the  
14      date of termination that the non-disparagement  
15      clause would apply?

16                          A.     That's not true. You can read it  
17      yourself.

18                          Q.     I read it myself and I disagree with  
19      your reading, so I'm asking you this.

20                          A.     So there's no way for us to  
21      communicate if you're telling me that my reading  
22      is wrong when it says in plain language that if  
23      there is a --

24                          Q.     So the answer is no?

25                          MR. HARRIS: If you'll allow him to

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answer the question. Don't argue with him.

3

Please allow him to answer the question.

4

Q. Go ahead, so the answer is no, you did not calculate an outside date that --

5

A. No, that isn't the answer. The answer to your question doesn't make any sense to me.

6

If you're talking about the six-month period in the contractual provision, it only applies if there is no change of control.

7

Q. So you did not calculate an outside date?

8

A. I didn't have to. I didn't apply. And I had the advice of numerous investment bankers whose lives are spent dealing with change of control provisions who were in agreement with what I said.

9

Q. Who were those people?

10

A. Virtually all of them.

11

Q. Every single one of the 41 people?

12

A. I didn't say every single one. I said virtually all of them. I don't remember. This was 14 years ago. But they were the experts on change of control provisions, as is

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1                         J. L. Liddle

2                         your client, I'm sure. Okay, and I don't think  
3                         that anybody can read that clause differently  
4                         and read it accurately, So including yourself.

5                         Q.     So the decision on change of control  
6                         was made after discussing the change of control  
7                         provision with some -- virtually all of the  
8                         claimants?

9                         MR. HARRIS: Objection.

10                        A.     No, I didn't say that.

11                        MR. HARRIS: That's not what he said.

12                        Q.     They were the experts. You just said  
13                        it. Tell me --

14                        MR. HARRIS: That's part of what he  
15                        said. I objection to the form of the  
16                        question.

17                        Ask a question that's not  
18                        objectionable, please.

19                        Q.     Who did you discuss the change of  
20                        control provision with?

21                        A.     In the broadest possible sense,  
22                        everybody who was part of the management buyout  
23                        team because on July 17th, they were told the  
24                        business was closing, and they were told that  
25                        they would get their CEP preference without any

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2 concern about signing a release. THE company  
3 was going out of business.

That was always the premise and that  
was their premise in asking that we exempt from  
our retention agreement, our representation of  
them, and that we not take a fee on something  
that they were already promised, but they were  
going to get by Lisa Bisaccia and the company,  
they had somebody in Boston on the speaker  
phone, as well.

12                   And that when the -- these separation  
13 agreements and releases came out, that indicated  
14 the same thing. So this was an issue that was a  
15 very back-burner issue.

16                   We looked, as I said, before we filed  
17 at this. We had a meeting in which we had sort  
18 of a devil's advocacy, is there another way to  
19 look at this, and our conclusion was no.

20 And that coincided with virtually  
21 everyone else and I would -- I ask a question  
22 here, is there anything that indicates that he  
23 actually sent such a letter as referred to in  
24 Exhibit 12, and I don't -- I don't know of any  
25 backup to that, that exists. If you have it,

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2 you show it to me.

3 Q. The devil's advocacy meeting that you  
4 just mentioned, is that the meeting you --

5 A. That's the meeting that I spoke about  
6 that I said we always try to have devil's  
7 advocacy for different positions, so that all  
8 the positions are out there and somebody isn't  
9 just saying let's do it this way.

10 Q. During this devil's advocacy meeting,  
11 were there any of your partners or colleagues in  
12 this firm that did not agree with that change of  
13 control analysis that you made?

14 A. During the meeting?

15 Q. During the advocacy meeting.

16                   A.         The nature of a devil's advocacy  
17         meeting is that you actually make sure that  
18         there's at least one devil's advocate.

19 So at least on the surface of it,  
20 more and more people were arguing that the  
21 provision did apply, and then we would go  
22 through a process of discussing it to determine  
23 whether or not that position had any basis.

24 Q. And that all occurred before the  
25 filing of the statement of claim; right?

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A. I thing so, yes.

3

Q. Now I'm just -- I've asked, but I haven't gotten any names, so I'm assuming you don't know who you spoke to, but I'm going to ask one more time.

7

Do you recall any of the individual claimants who you spoke to about the change of control issue?

10

A. I think I just answered the question for you. Virtually everybody from day one was somebody who started out with I was at the meeting or on the phone at the meeting, they're closing the business.

15

We were going to buy it. I don't know whether Mr. Barr was part of that group. I think he was not part of the group. But of the 40 or so, they were already of the mind when they walked in the room that they were being terminated, that they were going to be signing, at that moment, they were going to be signing a closing document, and there was going to be a change of control to them. That's what the closing was about.

25

So the idea that this was anything

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but a change of control, closing the business,  
selling it to them, what have you, is not -- is  
not something that -- that anybody was -- was  
raising at the time. And I don't think  
Michael Barr ever raised it.

7

Q. Did there come a time that the  
pleadings were amended in the action?

9

A. Yes.

10

11

12

13

14

(Plaintiff's Exhibit 13, the Amended  
Statement of Claim, marked for  
identification, as of this date.)

Q. I have a couple more questions on the  
prior document.

15

Could you read to me what is  
handwritten on the bottom right-hand part of the  
page?

18

A. Plaintiff's Exhibit 12?

19

Q. Right.

20

A. 7/28/16, NS.

21

Q. No, the handwritten portion at the  
bottom right-hand part of --

23

A. On the document, okay. To JRH,  
please see me to discuss this. Maybe some form  
of a motion, and I'm thinking that says for

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2 severing funds.

3 Q. For summary judgment?

4 A. It could be. By us will be  
5 available. Maybe it's summary judgment, yeah.

6 Q. Did you have ever discuss making a  
7 motion for summary judgment on deferred  
8 compensation claims?

9 A. I'm sure that at some point in the  
10 course of this case, we discussed making a  
11 motion for summary judgment on many things.

12 Q. Do you recall specifically making a  
13 motion for summary judgment or discussing making  
14 a motion for summary judgment in connection with  
15 this Michael Barr conversation from March of  
16 2004?

17 A. I don't.

18 Q. Was a motion for summary judgment  
19 ever made?

20 MR. HARRIS: Regarding this issue?

21 MR. HELLER: Regarding this issue.

22 A. By us?

23 Q. Yes.

24 A. I don't think so. There's not very  
25 many plaintiff summary judgment motions, but

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2             the -- I'm not sure of the exact timing of it,  
3             but there's a lot of procedural issues.

4                     For instance, summary judgment in the  
5             securities industry, arbitration is not really  
6             available. You don't use the Federal Rules of  
7             Civil Procedure.

8                     So I don't remember exactly where the  
9             issue was with regard to the case in  
10            Massachusetts, the Federal Court case.

11            Q.      So I do not know --

12            A.      I don't remember the timing. If I  
13             knew the context of the timing, I might be able  
14             to answer your question more fully, but I don't.

15                     (Plaintiff's Exhibit 14, the First  
16             Amended Counterclaim, marked for  
17             identification, as of this date.)

18            Q.      Because you're going to need some  
19             time doing that, I'm going to take a 2-minute  
20             break.

21            A.      I was just going to say that this --  
22             you're giving me this to refresh my recollection  
23             as to the timing, is that the point?

24            Q.      Yes.

25            A.      Okay. Yes, then I will have to look

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2 through it.

3 (Brief recess taken.)

4 FURTHER EXAMINATION

5 BY MR. HELLER:

6 Q. So, Mr. Liddle?

7 A. I reviewed this, and by reviewing it,  
8 cleared up my recollection on a couple of prior  
9 answers.

10 Q. Okay, so, and you're referring to --

11 A. And I would like to do that.

12 Q. -- Exhibit 14?

13 A. Yes, I would like to make those  
14 references on the record.

15 Q. Absolutely, please tell me?

16 A. In relation to Plaintiff's Exhibit 10  
17 and Plaintiff's Exhibit 11, you asked me  
18 questions about when -- when it was that we  
19 learned that The Wall Street Journal article or  
20 disparagement was an issue, and in reviewing  
21 this first amended counterclaim from the  
22 District of Massachusetts, I had my recollection  
23 refreshed in that this was in part what you were  
24 asking me about before when you showed me the --  
25 this was maybe the June 20th document, whatever

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2                           the hell the document was.

3                           So pages 15 and 16 refreshed my  
4                           recollection. You may remember that earlier I  
5                           said that there were a number of other people  
6                           beyond the people in our group who had received  
7                           those letters. And, of course, they were not  
8                           people who were either in our group or shall we  
9                           say referenced in the -- in The Wall Street  
10                          Journal article.

11                          And I had forgotten that we had  
12                          discussed that issue that we weren't clear as to  
13                          what -- what the -- what the rationale was.

14                          And then in this paragraph 52 and 53,  
15                          I think, refreshed my recollection that we did  
16                          not learn that specifically they were referring  
17                          to The Wall Street Journal, other news outlets,  
18                          until July 25th, 2003. Thank you.

19                          Q.     Did this refresh your recollection as  
20                          well as to the reference in the handwritten note  
21                          as to which case you might make a motion for  
22                          summary judgment?

23                          And the reason why I ask, the date of  
24                          this first amended counterclaim is January of  
25                          2008.

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2                       A. Right, it's -- it's possible that  
3                       that's what that reference is to, but there's a  
4                       group of things that took place in this case  
5                       that I was referring to when I said I have to  
6                       have my recollection refreshed.

7                       And because I have a -- I have a  
8                       recollection that between this time --

9                       Q. You're talking about March 2004?

10                      A. -- March 24, 2004 and 2007, I think.

11                      Q. '08, January of 2008?

12                      A. Right, that this case --

13                      Q. You mean the Massachusetts case?

14                      A. -- right, was, in fact, I believe  
15                       stayed pending the outcome of the arbitration.  
16                       And there was a reason that we filed this that  
17                       had to do with the statute of limitations issue,  
18                       if I recollect.

19                       We asked that this -- I think we  
20                       asked that the stay be lifted. We filed this  
21                       and then I think the stay was actually in  
22                       effect. Something along those lines. I'm not a  
23                       hundred percent sure, but I believe that between  
24                       these two time periods that there was a stay  
25                       that was in effect for at least some relatively

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2 significant time period.

3                   And we'd have to look at the  
4 Massachusetts file. Most of the Massachusetts  
5 actual litigation was something that was handled  
6 by Mr. Hubbard.

7 Q. I'm just trying to nail down a motion  
8 for summary judgment?

9           A.       It's possible. I just said it's  
10      possible, but without seeing all this other  
11      stuff as to when the stay went into effect,  
12      etcetera, I couldn't tell you for sure.

13 Q. While you have Plaintiff's Exhibit 14  
14 in front you, is this a true and accurate copy  
15 of the first counterclaim that was filed in the  
16 Massachusetts action to the best of your  
17 knowledge?

18 MR. HARRIS: First amended  
19 counterclaim.

20 MR. HELLER: First amended  
21 counterclaim.

22           A.       I don't think I can really answer  
23       that question.   I have to see what's in the  
24       court file.

Q. Not a problem. Back to Plaintiff's

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2 Exhibit 13, which is the amended statement of  
3 claim.

4 On the last page, page 29, did you  
5 authorize somebody to sign this document on your  
6 behalf?

7 A. Apparently so.

8 Q. What does LSM stand for?

9 A. Larry Moy.

10 Q. Do you know whether you reviewed the  
11 amended statement of claim before it was filed?

12 A. Let me take a quick look. I would  
13 say yes.

14 (Plaintiff's Exhibit 15, a document,  
15 marked for identification, as of this  
16 date.)

17 Q. How long were the arbitration  
18 proceedings in the -- (inaudible).

19 How long, how many years did the  
20 arbitration take? That's a better asked  
21 question.

22 A. A lot longer than was anticipated by  
23 the (inaudible) of arbitration, I can tell you  
24 that. It says the first scheduled hearing was  
25 November 1st of 2004. The date it was filed was

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2 in December of 2002, and the date decided was  
3 September 12, 2007, so it was long.

4 Q. What I've placed before you is  
5 Plaintiff's Exhibit 15, what appears to be the  
6 award of the arbitrators.

7 A. I'm going to take a quick look at  
8 that because --

9 Q. The amended award, I apologize.

10 A. Corrected award would be the accurate  
11 term, I think.

12 Q. Correct.

13 A. Okay.

14 Q. Do you recognize that document?

15 A. I'd say yes. I probably haven't read  
16 it through in many years, though.

17 Q. Do you know whether there was any  
18 deferred compensation under the 2002 cash  
19 equivalent plan awarded in this arbitration?

20 A. I know that there was not.

21 Q. Are you aware that there was a  
22 dissent in this award?

23 A. Absolutely.

24 Q. I'll ask you to turn to page ADD 20.

25 A. Yup, I have it.

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1                           J. L. Liddle

2                           Q.     Mr. Daly dissented?

3                           A.     Yes.

4                           Q.     Did you have an understanding of why  
5 he dissented?

6                           A.     Yes.

7                           Q.     What was his -- why did he dissent?

8                           A.     Because he wanted to award them  
9 monetary damages representing the value of the  
10 deferred compensation plan.

11                          And they, meaning two, did not agree  
12 with him that the panel had the authority to  
13 render such an award because it would have been  
14 rendered against a party that had refused to  
15 sign a submission agreement.

16                          Q.     So that was the only reason, in your  
17 view, why the deferred compensation was not  
18 awarded, because the party against whom the  
19 damage claim was made was not a party to the  
20 arbitration agreement?

21                          A.     That's a very big reason. If the  
22 panel felt, as I believe they did, and I think  
23 Mr. Daly's dissent indicates that they didn't  
24 have jurisdiction to do this, that would be one  
25 basis upon which their award could be vacated.

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So the answer is I'm highly confident  
that that's the reason. And I'm also highly  
confident because of something that  
Mr. Gandolfo, who is the chairman, said during  
the course of the arbitration, that they would  
hear all of this, but they would have to decide  
at some point whether or not the submission  
agreements were necessary, whether or not they  
had the authority to award against RSGI.

11

12

And I remember the phrase that he  
used there was, and if we decide not to, then up  
to Boston you go, meaning a reference to the  
then, I believe, stayed Federal Court case that  
had been brought originally by them and then we  
had those kind of --

17

Q. Was it your understanding also that  
the panel believed that no deferred compensation  
was due because of the disparagement?

20

A. Absolutely not. They tried  
everything in the sense of hearing all the  
evidence. There was very little that they kept  
out.

24

They followed the rules of evidence.

25

But they made no -- no such findings. And I'm

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1 J. L. Liddle

2 very sure that that was not something that if  
3 they had made such a finding, that they would  
4 have -- wouldn't have stated it here, especially  
5 when there's a dissent.

6 In the security industry's  
7 arbitration, there's a heavy, heavy, heavy  
8 emphasis put on coming up with a unanimous  
9 decision. The administrator is required to try  
10 to get the decision to be unanimous.

11 They're disinclined to put out awards  
12 especially in a large case like this that has  
13 dissents in them.

14 And so I believe that Mr. Daly made a  
15 decision that references exactly why this was  
16 not -- this issue was not breached.

17 Q. You mentioned something about someone  
18 sent off to Massachusetts?

19 A. No, and then up to Boston you go.

20 Q. Up to Boston you go, yes.

21 A. It wasn't someone, it was the  
22 chairman of the arbitration panel, and it was in  
23 reference to the fact that they were  
24 uncomfortable whether they had jurisdiction over  
25 the Robertson Stephens Group, Inc.

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1                           J. L. Liddle

2                           Q.     So is the Boston matter that he's  
3                           referring to, the document or the case that's  
4                           reflected by Plaintiff's Exhibit 14?

5                           A.     Yes, because they came in at the  
6                           outset of the very first time we had any kind of  
7                           actual hearing, saying that they had filed --  
8                           they had filed that case and they were not going  
9                           to sign any submission agreement on behalf of  
10                          the non-broker-dealer parties.

11                          Q.     Was the matter litigated up in  
12                          Boston?

13                          A.     In the broadest sense of the term  
14                          litigated, yes.

15                          Q.     What happened?

16                          A.     There's a question for you. After  
17                          the arbitration, we went up to Boston. We  
18                          sought to reinstate the case.

19                          And the other side made a motion, I  
20                          believe, for summary judgment. I'm trying to  
21                          remember whether it was for summary judgment,  
22                          but I think for summary judgment, which they  
23                          took the diametrically opposite viewpoint that  
24                          they had taken in the arbitration, and now  
25                          stated that of course the arbitration panel had

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dealt with the claims that were in that case,  
rather than as they had said in their summation  
over a 3-hour period probably 75 times that they  
were not before the arbitration panel speaks,  
the arbitration panel themselves.

7

8

And, you know, the case had gone on  
for not just several years, but close to 60 days  
of hearings.

9

10

So the judge who was a senior judge,  
accepted their motion, which we argued for the  
better part of a full day on a -- I'll just say  
it's sort of an off beat nouveau theory of race  
judicata.

11

12

And when we made all of the arguments  
and we had tried to get even more detail than  
had been had been -- (inaudible) -- you want to  
get the panel to say that they had not decided  
those things, and he was basically completely  
uninterested.

13

14

I mean from the first question, it  
was 8 hours of everybody, the litigators had  
been there about 8 hours, and it had been  
decided before we got that.

15

We took it up to the First Circuit.

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2 We hired an extremely prominent expert on civil  
3 procedure and co-author of Wright and Miller,  
4 Arthur Miller, who turns out had been the -- I  
5 believe the civil procedure professor for each  
6 of the three panel members and whose book  
7 contained both in the pocket part and the  
8 regular text, references to this oddball theory  
9 of race judicata, and then we argued and we did  
10 not prevail.

11 Q. Throughout the District Court case  
12 and the First Circuit's argument, you had still  
13 represented Mr. Barr and the defendants in the  
14 Massachusetts case?

15 A. It's --

16 Q. When I say, "you," I mean Liddle &  
17 Robinson.

18 A. Yeah, I'm -- I'm trying to remember  
19 what -- exactly how that worked. But the answer  
20 is yes, and there were -- I don't remember  
21 whether there were actual retention agreements  
22 or the agreements were related to advancing some  
23 of the expenses that would be associated with  
24 hiring the -- Arthur Miller and preparing, you  
25 know, the briefing and I don't mean hourly

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rates, I mean the basic costs of the expenses of  
the agreement.

4

And I believe everybody to varying  
degrees complied with whatever that, you know,  
request was.

7

Q. And was a motion made?

8

A. I have a recollection that we did,  
but it's just a vague recollection. I don't  
think that there was any -- any to be his  
candidate, it's possible, I don't think there  
was any basis to the get the Supreme Court to  
hear a case where there was no split in the  
circuits. There was no anything. It certainly  
wasn't Constitutional.

16

Q. But Liddle & Robinson represented the  
defendants in connection with the cert petition?

18

A. If there was cert petition, I would  
think we did, but I'd be happy to take a look at  
it.

21

(Plaintiff's Exhibit 16, the Petition  
for Writ of Certiorari for the Supreme  
Court for the United States in the matter  
of Alt against Robertson Stephens, marked  
for identification, as of this date.)

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1 J. L. Liddle

2 Q. Mr. Liddle, placed before you is a  
3 document marked as Plaintiff's Exhibit 16. It's  
4 the Petition For Writ of Certiorari for the  
5 Supreme Court for the United States in the  
6 matter of Alt against Robertson Stephens.

7                   Does this refresh your recollection  
8 as to whether or not the Liddle & Robinson firm  
9 represented Mr. Barr and Mr. Alt in the  
10 applicants for petitioners in connection with  
11 the petition for a writ of certiorari?

12 A. It does, yes.

13 Q. And did Liddle & Robinson represent  
14 those individuals?

15           A.     It looks to me like, again, in the  
16       United States, that they're all listed in the  
17       petitioners for the court section.

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1 J. L. Liddle

2 MR. HELLER: I'm going to just take a  
3 few minutes and see if I have any other  
4 questions.

5 (Brief recess taken.)

6 MR. HELLER: I have no further  
7 questions.

8 (Time noted: 3:08 p.m.)

9

10

11 JEFFREY L. LIDDLE

12

13 Subscribed and sworn to before me  
14 this day of , 2016.

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Page 142

1

# C E R T I F I C A T E

3

**STATE OF NEW YORK )**

5

: ss .

6

COUNTY OF NEW YORK )

7

I, NANCY SORENSEN, Notary Public  
within and for the State of New York, do  
hereby certify:

11                   That JEFFREY L. LIDDLE, the witness  
12                   whose deposition is hereinbefore set forth,  
13                   was duly sworn by me and that such  
14                   deposition is a true record of the  
15                   testimony given by the witness.

16 I further certify that I am not  
17 related to any of the parties to this  
18 action by blood or marriage, and that I am  
19 in no way interested in the outcome of this  
20 matter.

21 IN WITNESS WHEREOF, I have hereunto  
22 set my hand this 16th day of August, 2016.

Danny Sorensen

24

## NANCY SORENSEN

25

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2

----- I N D E X -----

3

WITNESS	EXAMINATION BY	PAGE
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4

JEFFREY L. LIDDLE	MR. HELLER	5
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6

----- INFORMATION REQUESTS -----

7

DIRECTIONS:

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RULINGS:

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TO BE FURNISHED:

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REQUESTS: 32, 42, 95, 100, 112

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MOTIONS:

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----- EXHIBITS -----

14

PLAINTIFF'S	FOR ID.
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16

Plaintiff's Exhibit 1, a copy of the	20
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17

retainer agreement Mr. Barr signed retaining	
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18

Liddle & Robinson	
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19

20

Plaintiff's Exhibit 2, a letter from	24
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21

Michael Barr to David Marek of Liddle & Robinson	
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22

dated October 2, 2002	
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23

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25

Part 3 Pg 144 of 216

Page 144

1

2 E X H I B I T S : (Cont'd)

3

4 Plaintiff's Exhibit 3, a separation agreement  
5 and release dated September 18, 2002 to  
6 Michael Barr, Bates stamped Barr 120 through  
7 Barr 136

8

9 Plaintiff's Exhibit 4, a document on 48  
10 Liddle & Robinson letterhead dated  
11 December 11, 2002 to Mr. Robert S.  
12 Clemente of the New York Stock Exchange,  
13 Bates stamped Barr 2380 through 2398

14

15 Plaintiff's Exhibit 5, a printout of a 58  
16 Wall Street Journal article

17

18 Plaintiff's Exhibit 6, a document dated 68  
19 December 10, 2002 from Christine Palmieri  
20 to Susanne Craig of The Wall Street Journal

21

22 Plaintiff's Exhibit 7, an e-mail from 70  
23 Susanne Craig to Jeffrey Liddle dated  
24 December 12, 2002

25

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1

2 E X H I B I T S : (Cont'd)

3

4 Plaintiff's Exhibit 8, an e-mail from 79  
5 Christine Palmieri to Susanne Craig dated  
6 December 10, 2006 at 6:11 p.m. with an  
7 attachment

8

9 Plaintiff's Exhibit 9, a time sensitive 81  
10 memorandum marked URGENT from to JLL from  
11 CAP dated 12/10/2002

12

13 Plaintiff's Exhibit 10, a document 93

14

15 Plaintiff's Exhibit 11, a letter from 106  
16 Jeffrey L. Liddle dated May 13, 2003  
17 In reference to Alt against FleetBoston

18

19 Plaintiff's Exhibit 12, a memorandum 113  
20 to file from JRH dated March 4, 2004

21

22 Plaintiff's Exhibit 13, the Amended 124  
23 Statement of Claim

24

25

Part 3 Pg 146 of 216

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2 E X H I B I T S: (Cont'd)

3

4 Plaintiff's Exhibit 14, the First 126

5 Amended Counterclaim

6

7 Plaintiff's Exhibit 15, a document 131

8

9 Plaintiff's Exhibit 16, the Petition 139  
10 for Writ of Certiorari for the Supreme  
11 Court for the United States in the matter  
12 of Alt against Robertson Stephens

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2 ERRATA SHEET

3 VERITEXT LEGAL SOLUTIONS

4

CASE: Barr v. Liddle & Robinson

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DEPOSITION DATE: July 28, 2016

6

DEPONENT: Jeffrey Liddle

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21 JEFFREY LIDDLE

22

SUBSCRIBED AND SWORN TO BEFORE ME

23

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_.

24

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NOTARY PUBLIC

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DATE COMMISSION EXPIRES

[&amp; - 7]

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New York Code  
Civil Practice Law and Rules  
Article 31 Disclosure, Section 3116

(a) Signing. The deposition shall be submitted to the witness for examination and shall be read to or by him or her, and any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness before any officer authorized to administer an oath. If the witness fails to sign and return the deposition within sixty days, it may be used as fully as though signed. No changes to the transcript may be made by the witness more than sixty days after submission to the witness for examination.

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VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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# EXHIBIT E

Part 3 Pg 172 of 216

**FOR MORE INFORMATION CONTACT JEFFREY L. LIDDLE AT 212-687-8500**

December 11, 2002

**PRESS RELEASE**

***FORMER ROBERTSON STEPHENS MANAGING DIRECTORS AND PRINCIPALS SUE FLEET AND ROBERTSON STEPHENS FOR OVER \$140 MILLION IN DAMAGES.***

(New York, NY) Today, 34 former Managing Directors and 8 former Principals of Robertson Stephens Group, Inc., sued FleetBoston Financial Corporation, Fleet Securities, Inc., Robertson Stephens, Inc. and Robertson Stephens Group, Inc. for unpaid compensation and other damages emanating from the fraudulent cancellation last summer of a management buyout of the Robertson Stephens operation.

Jeffrey L. Liddle, Esq. of Liddle & Robinson, L.L.P. in New York City represents the former Robertson Stephens employees, who were employed in the cities of New York, Atlanta, Boston and Chicago, the state of California and the country of Israel.

The 42 former Robertson Stephens employees (hereinafter "Claimants") filed an arbitration demand with the New York Stock Exchange, Inc. today seeking over \$140 million in damages, plus punitive damages, attorneys' fees, interest and costs. These damages are based on, among other things, Fleet's and Robertson Stephens's failure to pay promised and earned bonus compensation to Claimants for 2001 and 2002 and to provide proper notice pay under the Worker Adjustment and Retraining Notification ("WARN") Act, 29 U.S.C. § 2101 *et seq.* In

addition, Fleet made fraudulent misrepresentations and material omissions concerning Claimants' employment, compensation and equity interests in Robertson Stephens, and breached its fiduciary duties as majority shareholder of Robertson Stephens by acting in the interests of its own shareholders in first announcing the sale of, and then shutting down, Robertson Stephens.

On April 16, 2002 Fleet abruptly announced that it was putting Robertson Stephens up for sale, even though Fleet had no buyer in place. Worse still, Fleet advertised its reasons for the sale, stating that Robertson Stephens's strong operating performance during 1999 and 2000 was "aberrational" and that the future of investment banking business rested with larger platform firms and "not boutiques like Robbie Stephens." Not surprisingly after this announcement, Fleet was unable to obtain a buyer, and instead began negotiating a management buyout of the firm. On July 12, 2002, after more than 250 hours of negotiations, more than 12 hours of presentations and more than 1,000 pages of fully drafted legal agreements – and on the very day that the buyout agreements were to be distributed for signature – Fleet announced instead that it was shutting Robertson Stephens down, thereby terminating Claimants' employment.

Upon the termination of their employment, Claimants were not offered any bonus compensation for 2002, nor were they provided proper notice pay under the WARN Act. Furthermore, Claimants forfeited substantial amounts of non-cash deferred compensation, including Robertson Stephens Restricted Units, which had previously been valued by Fleet at no less than \$7 per share, but accorded a zero value by the separation agreements offered to Claimants.

*Attached is a copy of the Statement of Claim filed with the NYSE in Alt, et al. v. FleetBoston Financial Corporation, et al.*

# EXHIBIT F

Part 3 Pg 175 of 216

**FOR MORE INFORMATION CONTACT JEFFREY L. LIDDLE AT 212-687-8500**

December 11, 2002

**PRESS RELEASE**

***FORMER ROBERTSON STEPHENS MANAGING DIRECTORS AND PRINCIPALS SUE FLEET AND ROBERTSON STEPHENS FOR OVER \$140 MILLION IN DAMAGES.***

(New York, NY) Today, 34 former Managing Directors and 8 former Principals of Robertson Stephens Group, Inc., sued FleetBoston Financial Corporation, Fleet Securities, Inc., Robertson Stephens, Inc. and Robertson Stephens Group, Inc. for unpaid compensation and other damages emanating from the fraudulent cancellation last summer of a management buyout of the Robertson Stephens operation.

Jeffrey L. Liddle, Esq. of Liddle & Robinson, L.L.P. in New York City represents the former Robertson Stephens employees, who were employed in the cities of New York, Atlanta, Boston and Chicago, the state of California and the country of Israel.

The 42 former Robertson Stephens employees (hereinafter "Claimants") filed an arbitration demand with the New York Stock Exchange, Inc. today seeking over \$140 million in damages, plus punitive damages, attorneys' fees, interest and costs. These damages are based on, among other things, Fleet's and Robertson Stephens's failure to pay promised and earned bonus compensation to Claimants for 2001 and 2002 and to provide proper notice pay under the Worker Adjustment and Retraining Notification ("WARN") Act, 29 U.S.C. § 2101 *et seq.* In

addition, Fleet made fraudulent misrepresentations and material omissions concerning Claimants' employment, compensation and equity interests in Robertson Stephens, and breached its fiduciary duties as majority shareholder of Robertson Stephens by acting in the interests of its own shareholders in first announcing the sale of, and then shutting down, Robertson Stephens, according to Claimants.

On April 16, 2002 Fleet abruptly announced that it was putting Robertson Stephens up for sale, even though Fleet had no buyer in place. Worse still, Fleet advertised its reasons for the sale, stating that Robertson Stephens's strong operating performance during 1999 and 2000 was "aberrational" and that the future of investment banking business rested with larger platform firms and "not boutiques like Robbie Stephens." Not surprisingly after this announcement, Fleet was unable to obtain a buyer, and instead began negotiating a management buyout of the firm. On July 12, 2002, after more than 250 hours of negotiations, more than 12 hours of presentations and more than 1,000 pages of fully drafted legal agreements – and on the very day that the buyout agreements were to be distributed for signature – Fleet announced instead that it was shutting Robertson Stephens down, thereby terminating Claimants' employment.

Upon the termination of their employment, Claimants were not offered any bonus compensation for 2002, nor were they provided proper notice pay under the WARN Act. Furthermore, Claimants forfeited substantial amounts of non-cash deferred compensation, including Robertson Stephens Restricted Units, which had previously been valued by Fleet at no less than \$7 per share, but accorded a zero value by the separation agreements offered to Claimants.

*Attached is a copy of the Statement of Claim filed with the NYSE in Alt, et al. v. FleetBoston Financial Corporation, et al.*

# EXHIBIT G

## Sherry Shore

**From:** Christine Palmieri  
**Sent:** Tuesday, December 10, 2002 5:46 PM  
**To:** 'susanne.craig@wsj.com'  
**Subject:** Robertson Stephens

Further to your telephone conversation with Jeffrey Liddle, attached is the Statement of Claim to be filed tomorrow (without exhibits), as well as a press release, also dated tomorrow.

BECause THE CLAIM WILL NOT BE FILED UNTIL TOMORROW, THIS MATTER IS NOT TO BE PUBLISHED IN TOMORROW'S PAPER.



Statement of [press release.doc](#)  
Claim.doc

Christine A. Palmieri  
Liddle & Robinson, L.L.P.  
685 Third Avenue  
New York, N.Y. 10017  
(212) 687-8500 Ext 238  
Fax (212) 687-1505  
[www.liddlerobinson.com](http://www.liddlerobinson.com)

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E-MAIL: jliddle@liddlerobinson.com

December 11, 2002

BY HAND

Mr. Robert S. Clemente  
Director of Arbitration  
New York Stock Exchange, Inc.  
20 Broad Street, 5th Floor  
New York, New York 10005

Re: Eric E. Alt, Michael Barr, J.J. Beaghan, Brian S. Bean, Charles Bolton, Vincent Bowen III, Richard A. Brand, Clark Callander, Georgene Carambat, Michael Casey, Jeffrey W. Colin, Alex Dean, Christopher Dodge, David Fullerton, Philip Gardner, Jonathan Goldman, Christopher W. Greer, Tony Haertl, Gregory C. Holmes, Frederick M. Hughes, Daniel Hurwitz, Andrew Kaye, Maureen McCarthy, Kevin McGinty, Todd H. McWilliams, Samuel A. Morse, Agnes Murphy, Diane P. Murphy, David O'Brian, Joseph Piazza, Michael P. Perrella, Larry Rehmer, David Reilly, John T. Rossi, Mark J. Salter, Scott Scharfman, Allen Smith, Scott Sullivan, Steven Tishman, Ted E. Tobiason, Daniel P. White III and Jeff Winaker v. FleetBoston Financial Corporation, Fleet Securities, Inc., Robertson Stephens, Inc., and Robertson Stephens Group, Inc.

Dear Mr. Clemente:

We represent the Claimants in the above-referenced matter and submit this Statement of Claim against Respondents, FleetBoston Financial Corporation, Fleet Securities, Inc., Robertson Stephens, Inc., and Robertson Stephens Group, Inc.<sup>1</sup>

<sup>1</sup> Respondents FleetBoston Financial Corporation and Fleet Securities, Inc. shall be referred to collectively as "Fleet." Respondents Robertson Stephens, Inc. and Robertson Stephens Group, Inc. shall be referred to collectively as "Robertson Stephens."

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**Preliminary Statement**

The Claimants, all former executives of Robertson Stephens, seek over \$140 million in damages in this arbitration, plus punitive damages, attorneys' fees, interest and costs, based on, *inter alia*: Respondents' failure to pay promised and earned bonus compensation for 2001 and 2002; Respondents' failure, in violation of the Worker Adjustment and Retraining Notification ("WARN") Act, 29 U.S.C. §§ 2101-2109, to make proper notice pay payments to Claimants; Respondents' fraudulent misrepresentations and material omissions concerning Claimants' employment, compensation and equity interests in Robertson Stephens; and Fleet's breach of its fiduciary duties as majority shareholder of Robertson Stephens.

In addition to seeking earned compensation and other payments in connection with their employment and the ultimate termination of that employment, Claimants seek damages for Fleet's actions in encouraging Claimants to remain at Robertson Stephens until it abruptly decided to close Robertson Stephens's business on July 12, 2002, misrepresenting the "non-cash" compensation earned by the Claimants, misrepresenting and concealing its intention to shut down Robertson Stephens irrespective of its ability to sell Robertson Stephens either to outside buyers or to Robertson Stephens' management, exercising control over Robertson Stephens purely for Fleet's benefit, and otherwise conducting itself in a fraudulent and deceitful manner to Claimants' detriment. Fleet's conduct, beginning with the termination of Robertson Stephens' successful CEO and continuing through numerous stages of layoffs and a negative announcement concerning Fleet's desire to sell Robertson Stephens, resulted in the complete elimination of the Robertson Stephens firm, which had generated significant revenues and earnings for Fleet and its predecessor BankBoston, which Fleet acquired in October 1999. As a result, Claimants' careers and reputations were damaged, their earned compensation (largely invested in non-cash compensation) was deemed "forfeited," and they suffered the loss of prospective compensation, both from other employers and from the continuation of Robertson Stephens's operations through a management buy-out.

**Background**

Robertson Stephens is an investment banking firm that had been in existence for 24 years before Fleet announced, on July 12, 2002, that it was ceasing Robertson Stephens's operations. Claimants were Managing Directors and Principals of Robertson Stephens, and among the most senior and most productive individuals within the firm. Claimants were employed in the cities of New York, Atlanta, Boston and Chicago, the state of California and the country of Israel.

Robertson Stephens was founded in 1978 and was acquired by Bank of America in 1997. Bank of America sold Robertson Stephens to BankBoston in 1998. In October 1999, Fleet merged with BankBoston and, as a result, acquired Robertson Stephens.<sup>2</sup> Thus, from October 1999 to date, Fleet has controlled the operations of Robertson Stephens. Indeed, as detailed below, at

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<sup>2</sup> The current Chairman and CEO of FleetBoston Financial Corporation, Chad Gifford, consummated BankBoston's acquisition of Robertson Stephens in his capacity as CEO of BankBoston.

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times Fleet exercised its control over the business of Robertson Stephens without first informing the management of Robertson Stephens of its true intentions.

Since Fleet's acquisition of the firm, Robertson Stephens generated billions of dollars of revenue for Fleet. By 2000, Robertson Stephens was a leading underwriter for all equity issues, including the number one "lead underwriter" for initial public offerings in the technology sector. Moreover, the firm was a leading adviser in mergers and acquisitions transactions and a top market maker of publicly-traded securities, and it consistently generated millions of dollars in profits through the efforts of each of its departments: sales and trading, investment banking, money management, and research. In 2000, Robertson Stephens Group generated revenues of \$1.55 billion and net income of \$250 million. On a cumulative GAAP basis since its acquisition in 1999, Robertson Stephens has contributed nearly \$3.5 billion in revenue to Fleet.

Respondents Promise Claimants  
Valuable Equity in Robertson Stephens

In December 2000, at the conclusion of a very successful year for Robertson Stephens, Fleet advised Robertson Stephens that Robertson Stephens employees would be granted equity in the firm, and that a Board of Directors would be established – consisting of two members each from Fleet and Robertson Stephens – to protect the interests of Robertson Stephens's minority shareholders, including Claimants. Of 100 million "Robertson Stephens Restricted Units" (at the time valued by Lazard Freres at \$1 billion, or \$10 per unit), Robertson Stephens employees were to receive 30 percent (30 million units), with 22.5 percent to be granted initially and the remaining 7.5 percent to be retained for future allocations to existing and future Robertson Stephens employees. These measures were considered necessary to retain key employees, since Robertson Stephens had lost more than 10 principals to competitors in the prior 18-month period.

Rather than creating support from Fleet for Robertson Stephens, Robertson Stephens's \$1.55 billion revenue year for 2000 ultimately resulted in hostility by Fleet's top management towards Robertson Stephens and its employees. Terrance Murray, ("Murray"), FleetBoston's CEO, and Bob Emery ("Emery"),<sup>3</sup> the CEO of Robertson Stephens, were involved in a very public dispute over how Robertson Stephens employees were to be compensated for the banner year achieved in 2000. Under compensation agreements entered into as part of BankBoston's acquisition of Robertson Stephens in 1998 (which were assumed by Fleet when it acquired BankBoston in 1999), Robertson Stephens was to receive 55 percent of the net revenues generated by the firm to distribute as compensation to its employees for each year through 2001. The dispute concerned whether the 55 percent threshold applied to cash compensation only, or to both cash and non-cash compensation. Believing the dispute had been resolved in its favor and that it had an additional \$70 million in compensation to distribute for the year 2000, Robertson

<sup>3</sup> Emery, named one of the top 50 people in the technology community worldwide in 2001, had delivered two record years of performance at Robertson Stephens to Fleet.

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Stephens's management distributed such amount.<sup>4</sup> Following the \$70 million distribution, Jay Sarles ("Sarles") (Head of Wholesale Banking for FleetBoston) fired Emery, at Murray's direction, and appointed John Conlin ("Conlin") (then President of Robertson Stephens) to head the firm going forward. Following these events, Fleet failed to honor its obligations regarding the distribution of Robertson Stephens Restricted Units, stalling such distribution until May 2001. At that time, moreover, only 20 percent of the firm's equity (and not the 22.5 percent that had been promised) was distributed to Robertson Stephens employees. (In addition, Respondents ultimately failed to distribute the full 30 percent, or 30 million units, that had previously been agreed upon.)

Respondents Direct the Reduction of  
Robertson Stephens's Workforce in a  
Manner Designed to Further Their Own Goals

Throughout 2001, difficult market conditions prevailed, including an industry-wide decline in technology sector investment banking activity, as well as lower volumes in overall investment banking transactions and other industries in which Robertson Stephens engaged. The managements of Fleet and Robertson Stephens concluded that Robertson Stephens needed to reduce the number of its employees in order to remain profitable. As a result, Fleet directed Robertson Stephens to reduce Robertson Stephens's workforce by a staggering 50 percent, from approximately 2,000 to approximately 1,000 employees. Robertson Stephens's management suggested that if such a massive reduction in force was necessary, Robertson Stephens would benefit most by doing so in one downsizing, so as to achieve the benefits of reduced compensation expense immediately.

Fleet, however, insisted that Robertson Stephens take these staffing cuts over time given Fleet's financial concerns. Fleet's own corporate lending and banking business had suffered massive losses in its operations relating to Brazil and Argentina and through its exposure to various large corporate credit failures, including Enron, Kmart and Global Crossing. Fleet also suffered large write-downs in its investment portfolio, which were primarily attributable to technology and telecommunications investments wholly unrelated to Robertson Stephens. By the fourth quarter of 2001, Fleet reflected write-downs, charges and other extraordinary losses relating to its own corporate lending and banking businesses exceeding \$2 billion for the year, and year-over-year comparable net income for FleetBoston fell by \$3 billion in 2001. Upon information and belief, even these sizeable losses were understated, since Fleet failed to reflect the full extent of its losses until the second quarter of 2002. Moreover, Fleet's losses in Latin America may still not be fully recognized.<sup>5</sup>

In light of these staggering losses within its own businesses, Fleet decided against reducing Robertson Stephens's staff all at once. Instead, Fleet dictated that Robertson Stephens

<sup>4</sup> Emery and the other five members of the Robertson Stephens Executive Committee received the bulk of the \$70 million.

<sup>5</sup> Based on the criminal indictments of Fleet officers in Argentina and civil cases pending concerning Fleet's premature freezing of customer assets in Argentina, Fleet's losses in Argentina alone could rise dramatically from the current \$2.3 billion in aggregate losses to date.

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reduce its personnel in four stages so that Fleet would not need to reflect a write-down for severance and other charges relating to the downsizing of Robertson Stephens in one massive charge. Fleet's decision in this context, as well as its "staging" of losses and charges in South America and in its investment portfolio, was indicative of Fleet's practice of "earnings smoothing" for the purpose of artificially supporting Fleet's stock price.<sup>6</sup> In addition, Fleet's decision was consistent with Fleet's pattern of making decisions regarding Robertson Stephens for the benefit of Fleet and Fleet's shareholders rather than for the benefit of Robertson Stephens and Robertson Stephens's minority shareholders and employees, such as Claimants.

From approximately March through November 2001, Fleet and Robertson Stephens executed Fleet's plan of staged personnel layoffs. By the end of 2001, Fleet and Robertson Stephens's management had reduced the size of Robertson Stephens by half, to approximately 1,000 employees. Although Robertson Stephens Group's revenues declined to \$466 million for 2001, resulting in a \$98 million net loss,<sup>7</sup> the massive cuts in staffing put the firm in a position to regain its profitability in 2002. By November 2001, Robertson Stephens Group was once again generating a positive cash flow, and during the first quarter of 2002, the firm generated \$2.4 million in normalized cash earnings.

#### Respondents Promise Claimants Market Compensation for 2001

Throughout 2001, Respondents told Claimants that Respondents intended to pay Claimants "market compensation" for their efforts in 2001. Specifically, Sarles promised on innumerable occasions (nearly every two or three weeks) that despite the difficult and extraordinary circumstances faced in 2001 (including Emery's termination, the 9/11 disaster and the ongoing layoffs), key Robertson Stephens employees (retained Managing Directors and Principals) would receive "market compensation," sentiments that were frequently echoed by Conlin and Todd Carter, Robertson Stephens's CEO and President, respectively. These promises reflected Fleet's apparent effort to retain top talent among the Robertson Stephens employees despite the massive ongoing personnel cuts at Robertson Stephens.

Respondents made clear that "market compensation" would be determined by the employee's revenue production and the compensation paid by comparable Wall Street firms. In addition, the historical compensation payout formula (approximately 55 percent of revenue) was reaffirmed to promote ongoing production from Robertson Stephens employees. In order to establish appropriate pay levels for Principals, Managing Directors and other Robertson Stephens executives, Fleet subscribed to compensation surveys from McLagan Partners and Greenwich Associates that set forth pay at comparable firms for similar levels of responsibility and revenue generation.

<sup>6</sup> Another reason for Fleet to shift its 2001 losses to the following year was to pave the way for a smooth retirement for Murray, who retired at the end of 2001.

<sup>7</sup> The loss Robertson Stephens incurred in 2001 represented the first loss for any year in the history of the firm.

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Despite Respondents' promises, Respondents failed to pay Claimants market compensation for 2001, but instead paid on average half that amount. Claimants received on average five percent or less of the revenues they generated as compensation (when the Wall Street benchmark is at least 10 percent).<sup>8</sup> Upon information and belief, Claimants' compensation for 2001 also fell substantially below the compensation of their peers as indicated in the McLagan and other surveys.

Respondents Issue Restricted Units and  
Other Non-Cash Deferred Compensation to  
Claimants In Order to Retain Top Employees

Claimants' 2001 bonuses, moreover, were comprised largely of deferred non-cash compensation,<sup>9</sup> including Fleet options, "money market" funds vesting over the course of 2002 and 2003, and equity in Robertson Stephens in the form of one million Robertson Stephens Restricted Units. Whereas the convention on Wall Street is to pay 20 to 33 percent of bonus compensation in the form of deferred compensation, and in the history of Robertson Stephens no more than 20 percent of bonus compensation had been deferred, Claimants received as much as 100 percent of their 2001 compensation in the form of deferred compensation.

Respondents told Claimants that, for each Restricted Unit granted to Claimants, they would receive one share of Robertson Stephens common stock upon the earliest of: (a) the termination of their employment, (b) the liquidation of Robertson Stephens, or (c) the expiration of the restricted period<sup>10</sup> of such units. These same terms applied to the 20 million Restricted Units distributed in May 2001. The remaining Restricted Units earmarked for Robertson Stephen employees (i.e., the balance of the 30 million units Respondents had agreed to distribute, plus Restricted Units forfeited by employees who voluntarily resigned or were terminated for cause) were never allocated.

Through March 2002, Respondents represented to Claimants that each Restricted Unit had a value of at least \$7. Indeed, in written confirmations of Claimants' compensation for 2001, which were distributed and orally confirmed in March 2002, Respondents stated that "the units are exchangeable, under certain circumstances, for shares of Robertson Stephens common stock," and that such common stock "has an estimated market value of \$7 per share, consistent with an analysis performed by Lazard Freres during 2001," which valued the firm's aggregate

<sup>8</sup> Respondents also paid 2001 bonuses later than usual in a further effort to keep employees from leaving for competitors.

<sup>9</sup> Such deferred non-cash compensation is not uncommon on Wall Street. Ostensibly, the purpose behind a non-cash deferral is to retain employees by providing an incentive for them to stay with the firm and not defect to a competitor in order to reap long-term benefits from the increased value of the company in the future.

<sup>10</sup> Five years for restricted units awarded as part of Claimants' incentive compensation, and seven years for restricted units granted as "service awards."

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equity in excess of \$700 million. This value was consistent with the \$6.75 book value per share of Robertson Stephens Group as of March 31, 2002 (prior to the fateful April 16 announcement).

Claimants relied to their detriment upon Respondents' representations regarding the "market compensation" they were to receive for 2001, the value of the non-cash deferred compensation they received in 2001 and prior years, and the amounts and value of the equity they expected to receive in the future, by, among other things, declining alternative employment opportunities, remaining at Robertson Stephens, and accepting long-term deferred compensation comprised of the Restricted Units and other non-cash compensation. In addition, Respondents concealed from Claimants Fleet's plan to sell the Robertson Stephens firm. Instead, Respondents misrepresented that Fleet had no intention of selling Robertson Stephens because Fleet understood the "strategic" importance of Robertson Stephens to Fleet.

In fact, upon the expiration of the BankBoston contracts in February 2002, which provided for the distribution of 55 percent of revenues as bonus compensation, Fleet entered into a new long-term compensation arrangement with Robertson Stephens, which provided for varied aggregate compensation payout ratios between 48 and 65 percent of revenues, depending on whether annual revenues were less than \$500 million, greater than \$500 million but less than \$1.5 billion, or greater than \$1.5 billion. (Upon information and belief, however, Fleet knew, by as early as late 2001, that Fleet secretly intended to seek to sell or close Robertson Stephens. Thus, Fleet's negotiation of long-term compensation arrangements concerning Robertson Stephens was tainted by bad faith.) The BankBoston contracts, however, provided for payment of a year's compensation to Robertson Stephens employees whose employment was terminated prior to February 28, 2002. For this reason, Fleet delayed its plans to sell or close Robertson Stephens until the expiration of those contracts. In addition, Respondents hid from Claimants Fleet's intention to sell or shut down the Robertson Stephens firm.

Fleet's Premature Announcement  
Of the Sale of Robertson Stephens  
Damages the Firm and Its Professionals

On April 16, 2002, Fleet suddenly announced that it was putting Robertson Stephens up for sale. In a highly unusual step, **Fleet made this announcement without any buyer in place.** By doing so, Fleet essentially advertised that it had not found a buyer for Robertson Stephens, thereby reducing the value of the Robertson Stephens concern. Worse still, Fleet released to the media – and discussed with institutional investors and Wall Street research analysts in its quarterly earnings call – its reasons for ridding itself of Robertson Stephens, including dissatisfaction with volatility in Robertson Stephens's earnings performance. Fleet also stated that Robertson Stephens's strong operating performance during 1999 and 2000 was "aberrational" and "would not return in our collective lifetimes," and expressed its belief that future benefits of the investment banking business would accrue to more diversified, larger platform firms and "not boutiques like Robbie Stephens." This language was especially disparaging given that Robertson Stephens had been a leading underwriter of public offerings since 2000, was a top market maker of NASDAQ securities, and managed billions in institutional

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and high net worth assets.

The timing of this announcement, in connection with the announcement of other "clean-up" measures,<sup>11</sup> was designed to serve Fleet and to bolster Fleet's stock price without regard to Robertson Stephens or Claimants. In fact, Fleet's stock increased by over \$2 billion in the aggregate after its April 16 announcement.

Immediately, Fleet's rash announcement cast Robertson Stephens in a negative light, and generated speculation that Robertson Stephens's value had dropped precipitously from the \$800 million BankBoston had paid for the firm in 1998. In addition, the announcement hurt Claimants' ability to bring in business, maintain existing clients, and otherwise generate revenues for Robertson Stephens. This harm spread across all departments at Robertson Stephens – new investment banking clients shied away, institutional investors reduced their commission flow, high net worth individuals transferred their assets to other institutions, and all clients expressed concern regarding the future of the firm, a subject that was speculated upon in numerous press articles.

Despite the potential impact of Fleet's announcement on every employee within the Robertson Stephens firm, Fleet failed to notify Robertson Stephens's management of the planned announcement until April 15, 2002, just one day prior to the actual announcement. (The announcement was reported in a lengthy Wall Street Journal article, a copy of which is attached hereto as Exhibit A, indicating that Fleet had probably made its intentions known to the media several days prior to when Fleet informed the management of Robertson Stephens.) Fleet concealed its announcement from Robertson Stephens's management and Claimants despite the fact that Fleet representatives sat on the Board of Directors of Robertson Stephens.

#### Fleet Negotiated in Bad Faith a Proposed Management Buy-Out of Robertson Stephens

Even after its April 16, 2002 announcement, Fleet continued to make material misrepresentations to Robertson Stephens employees concerning their future employment. On April 26, 2002, Sarles declared that Fleet had no intention of liquidating Robertson Stephens.

Fleet engaged Goldman Sachs, which, after interviewing the Robertson Stephens Executive Management team, put together a summary information statement outlining the opportunity to acquire Robertson Stephens. The statement was circulated to 72 prospective purchasers, signaling an auction of the firm. Not surprisingly, given Fleet's disastrous April 16 announcement and comments concerning the undesirability of Robertson Stephens, none of the prospective purchasers sustained interest in Robertson Stephens. By June 2002, after Fleet was unable to locate a buyer, Fleet and Robertson Stephens's management had begun discussions concerning management's potential purchase of Robertson Stephens. Robertson Stephens

<sup>11</sup> Fleet's other announcements included a reduction in its exposure to non-strategic areas of corporate lending, the scaling back of investments in its Principal Investing business, the sale of AFSA (Fleet's outsourcing and education services business), and strategic decisions concerning its Global Banking operations.

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representatives conducted more than 250 hours of negotiations with Fleet and more than 12 hours of presentations to the entire group of Robertson Stephens professionals outlining the terms of the planned management buy-out ("MBO"), and more than 1,000 pages of legal agreements were fully drafted and awaiting execution. Moreover, Robertson Stephens's management (and, upon information and belief, Fleet's management), confirmed to clients and the media that the MBO was being negotiated and that an agreement in principle had been reached to continue the operations of Robertson Stephens.

Also in connection with the MBO, Terrence Laughlin, Fleet's head of Corporate Strategy and Development, advised that Robertson Stephens would need to endure further cuts in personnel to enable an MBO. In a good faith effort to effect the MBO, Robertson Stephens cut personnel further – to approximately 500 employees by July 12, 2002.<sup>12</sup> Each Managing Director who was to remain with the newly-constituted MBO firm was given a pro forma allocation of equity and a draft term sheet. Fleet concealed from Robertson Stephens and Claimants, however, that Fleet never intended to complete the MBO transaction.

#### Fleet Closes Robertson Stephens

At Fleet's insistence, and based upon the apparent willingness of Fleet to sell Robertson Stephens to its management, Robertson Stephens had taken the drastic step of reducing its staff from 2000 to 500 employees in just over one year. Despite having imposed such requirements as a condition of enabling an MBO, and having negotiated the MBO to near-completion, on July 12, 2002 – the very day that the MBO agreements were to be distributed for signature – Fleet informed Robertson Stephens that it had "run out of time" and discontinued all efforts to negotiate an MBO.<sup>13</sup> Three days later, Fleet announced the liquidation of Robertson Stephens. Eugene McQuade ("McQuade"), a Fleet Vice Chairman and Fleet's Chief Financial Officer, stated "we have decided a wind-down is in the best interest of our shareholders." (emphasis added)

On August 6, 2002, Fleet scheduled an extraordinary intra-quarter conference call with the Wall Street analyst community to calm rumors and concerns over the soundness of Fleet – rumors that began circulating after further sizeable write-downs in Latin America and other areas of the bank had been disclosed in the prior month's quarterly earnings call and Fleet's stock price decreased by 50 percent. On the call, to alleviate concerns over future dividend cuts, McQuade stated that Fleet would be able to continue to pay the current quarterly dividend rate to its shareholders, in large part because the liquidation of Robertson Stephens provided sufficient cash and freed-up capital to meet certain "liquidity tests" set forth in relevant dividend covenants.

<sup>12</sup> The Claimants in this arbitration (with few exceptions) were Robertson Stephens employees through at least July 12, 2002.

<sup>13</sup> Documents from Fleet rejecting the MBO were dated two weeks earlier than the date on which they were received by Robertson Stephens.

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Fleet's decision to close Robertson Stephens resulted in the termination of Claimants' employment. Respondents offered Claimants severance packages that required Claimants to sign a release of all claims in order to receive "supplemental incentive bonus" amounts, which represented earned bonus compensation for prior years that had been paid in the form of Fleet stock and options. Moreover, the severance packages included "WARN Period Salary" which Respondents (a) improperly calculated based only on base salary, and (b) improperly deducted from severance due Claimants based on their tenure with the firm.

Claimants were offered no bonus compensation for the services they provided and the revenue they produced under extremely difficult conditions in 2002. In addition, although acknowledging that Claimants would be entitled to shares of Robertson Stephens common stock equivalent to the number of all of their Robertson Stephens Restricted Units, Respondents' severance proposals to Claimants attributed a zero value to the Restricted Units and common stock. Only weeks earlier, Respondents had reassured Claimants of the at least \$7 per share value of the Restricted Units and had described Robertson Stephens as a viable ongoing firm valued at over \$700 million, rendering it unbelievable that "neither the restricted units under the Restricted Unit Plan, nor the underlying shares of Robertson Stephens common stock, have a positive value," as stated in the severance proposals. Moreover, Fleet paid \$5 per Restricted Unit to Robertson Stephens employees terminated in November 2001 and in Europe in mid-2002.

## CLAIMS

### WARN Act Claims

In the separation packages offered to Claimants, Respondents acknowledge that the WARN Act governs their decision to close the Robertson Stephens firm. The WARN Act provides, in pertinent part:

An employer shall not order a plant closing or mass layoff until the end of a 60-day period after the employer serves written notice of such an order --

- (1) to each representative of the affected employees as of the time of the notice or, if there is no such representative at that time, to each affected employee.

29 U.S.C. § 2102(a).

The WARN Act was "designed to give workers and their families some transition time to adjust to the prospective loss of employment, to seek and obtain alternative jobs and ... to enter skill training ... that will allow these workers to successfully compete in the job market." Martin v. AMR Services, 877 F. Supp. 108, 113 (E.D.N.Y. 1995) (internal citations omitted).

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Respondents violated the WARN Act by failing to provide the requisite 60-day notice prior to closing Robertson Stephens' operations (or, alternatively, to pay 60 days of notice pay). Failure to give written notice of termination within the 60 days prescribed constitutes a violation of the WARN Act. See, e.g., Finnan v. L.F. Rothschild & Co., Inc., 726 F. Supp. 460 (S.D.N.Y. 1989); New Orleans & Vicinity v. Dillard Department Stores, 15 F.3d 1275 (5th Cir. 1994).

When proper notice is not provided, employees are entitled to back pay damages of up to 60 days of notice pay. The notice pay offered to Claimants in lieu of Respondents' providing 60-days' notice of the closing of Robertson Stephens violates the WARN Act in two respects. First, the payment should have been calculated on a total compensation basis. Respondents instead offered notice pay based only on base salary. The WARN Act describes the extent of an employer's liability for failure to provide the required notice as:

"back pay for each day of violation at a rate of compensation not less than the higher of—

- (i) the average regular rate received by such employee during the last 3 years of the employee's employment; or
- (ii) the final regular rate received by such employee...."<sup>13</sup>

29 U.S.C. § 2104(a)(1). The WARN Act back pay remedy must be calculated to reflect the amount an "employee actually would have earned" and not merely an employee's base salary. Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc., 244 F.3d 1152 (9<sup>th</sup> Cir. 2001).

Second, Respondents deducted the WARN notice pay offered to Claimants from severance due Claimants pursuant to an entirely separate obligation, namely, Respondents' severance plans and ERISA. This deduction is not permitted by the WARN Act. 29 U.S.C. § 2104(a)(2) provides in pertinent part:

The amount for which an employer is liable under paragraph (1) shall be reduced by

- (A) any wages paid by the employer to the employee of the period of the violation;
- (B) any voluntary and unconditional payment by the employer to the employee that is not required by any legal obligation; and
- (C) any payment by the employer to a third party or trustee (such as premiums for health benefits or payments to a defined contribution pension plan) on behalf of and attributable to the employee for the period of the violation.

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Severance payments, however,

are not "wages" as contemplated by 29 U.S.C. § 2104(a)(2)(A), but rather ERISA payments that the company was already legally obligated to make regardless of the work the [claimants] performed. The fact that these payments happened to be labeled ["WARN Period Salary Offset"], and that they happened to be set at the level of the [claimants'] wages, is irrelevant. The payments were not made in exchange for work that the[claimants] would have performed during the period of the violation. Accordingly, they are not "wages" according to 29 U.S.C. § 2104(a)(2)(A).

Ciarlante v. Brown & Williamson Tobacco Corp., 143 F3d 139, 152 (3<sup>rd</sup> Cir. 1998). See also Tobin v. Ravenswood Aluminum Corp., 838 F. Supp 262, 273 (S.D.W.Va. 1993) ("The court notes that severance pay under ERISA does not constitute wage compensation."); 29 U.S.C. § 2104(a)(1)(B) (providing that damages for failure to provide proper notice under the WARN Act include payment of benefits under an employee benefit plan in addition to backpay). Here, where the severance package attempts to deduct WARN Act back pay damages from an already present legal obligation under ERISA, the deduction is improper, and Claimants should receive the full value of both the WARN and ERISA payments.

Based on Respondents' violation of the WARN Act, Claimants each should be awarded damages based on their individual rates of compensation, in accordance with 29 U.S.C. § 2104, together with their attorneys' fees and costs.

### Bonus Claims

Claimants were employed in the following divisions: investment banking, sales and trading, research, and retail brokerage. Except for retail salespeople, all of the Claimants were compensated in similar fashion – in addition to base salary, they earned year-end bonuses, which accounted for the bulk of their total compensation. Claimants understood that their bonus was a function of the firm's performance, their department's performance and their individual performance. Not only was this manner of calculating bonuses Respondents' practice and policy for several years, but Respondents made express representations to many of the Claimants that this is precisely how their bonuses would be determined.

For 2001, moreover, Respondents expressly promised Claimants that they would receive "market compensation" based on their performance and the compensation paid by comparable Wall Street firms. Respondents failed to fulfill this promise, paying bonuses that were well below market and overwhelmingly comprised of deferred compensation. Respondents also failed to fulfill their promise that Robertson Stephens employees would receive 30 percent of the firm's equity in the form of Restricted Units.

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In addition, Respondents repeatedly advised Claimants throughout their employment during 2002 that Respondents had been accruing a 2002 bonus pool that totaled approximately \$40 million. Upon the termination of Claimants' employment, however, Respondents told Claimants that Claimants would receive no bonus compensation for 2002. Claimants are nonetheless entitled to such earned compensation.

Courts recognize implied, as well as express, contracts. The bonus compensation Claimants should have been paid for both 2001 and 2002 was owed to them under an implied contractual promise. “[A]n implied-in-fact contract ... [is] based on the conduct of the parties, from which ... [they] fairly infer the existence and terms of a contract.” Radio Today, Inc. v. Westwood One, Inc., 684 F. Supp. 68, 71 (S.D.N.Y. 1988).<sup>14</sup> see also Division of Labor Law Enforcement v. Transpacific Transportation Co., 69 Cal.App.3d 268, 275, 137 Cal.Rptr.855 (1977) (“As to the basic elements, there is no difference between an express and implied contract. While an express contract is defined as one, the terms of which are stated in words, an implied contract is an agreement, the existence and terms of which are manifested by conduct.”); LiDonni, Inc. v. Hart, 355 Mass. 580, 583, 246 N.E.2d 446, 449 (1969) (“In the absence of an express agreement, a contract implied in fact may be found to exist from the conduct and relations of the parties”); Century 21 Castles By King, LTD. v. First National Bank of Western Springs, 170 Ill.App.3d 544, 548, 524 N.E.2d 1222 (1988) (“a contract implied in fact arises not by express agreement but, rather, by a promissory expression which may be inferred from the facts and circumstances which show an intent to be bound”); Fortner v. McCorkle, 78 Ga.App. 76, 80, 50 S.E.2d 250, 253 (1<sup>st</sup> Div. 1948) (“In the absence of an express contract between the parties for the payment of such services, there may arise an implied contract by which the person to whom the services are rendered shall pay the other for the services, where from all the facts and circumstances it can reasonably be inferred that it is in the contemplation of the parties.”).

Here, an implied contract for the payment of bonuses is established between Respondents and Claimants because (1) Respondents had a long-standing policy and practice of paying bonuses as part of annual compensation; (2) Claimants received bonuses in the past based

<sup>14</sup> The practice of paying bonuses makes bonus compensation an implied part of any employment agreement. See, e.g., Credit Suisse First Boston v. Crisanti, 734 N.Y.S.2d 150, 151 (1<sup>st</sup> Dep’t 2001) (“We find no basis for judicial disturbance of the arbitrators’ primarily factual conclusion that the bonus sought by respondent was an essential component of his compensation and that the parties’ course of dealing and the industry practice gave rise to an implied right to a bonus.”); Mirchel v. RMJ Securities Corp., 613 N.Y.S.2d 876, 878-79 (1st Dep’t 1994) (“The course of dealing between the parties evinces an implied promise that annual or semi-annual bonus payments constitute a part of plaintiff’s compensation.”); Quintoli v. Garvin Guybutler Corp., 726 F. Supp. 494, 507-08 (S.D.N.Y. 1989) (an implied promise that bonus payments constitute a term of employment can be shown through a course of dealing between employer and employee). Numerous bonus cases have been brought in arbitration and won by the claimants. See Randall Smith, “Losing a Job on Wall Street These Days Often Doesn’t Mean Losing a Bonus, Too,” Wall Street Journal, July 19, 2000, at C1 (attached hereto as Exhibit B); Marais v. Barclays De Zoete Wedd, Inc. and Barclays Capital, NASD Case No. 00-02520 (panel awarded bonus compensation totaling \$417,500 plus interest); Brown, et al. v. ING Baring Furman Selz, NYSE Docket No. 2000-8755 (panel awarded bonus of \$206,750 plus interest); Alban-Davies v. Credit Lyonnais Securities (USA) Inc.; NYSE Docket No. 2000-8631 (panel awarded bonus of \$650,000 plus interest); Halpern, et al. v. ING Baring (U.S.) Securities Inc., NYSE Docket No. 1998-7179 (panel awarded bonuses totaling \$298,154.76, including interest).

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upon this long-standing practice; (3) bonuses constituted a substantial portion of Claimant's annual compensation packages; and (4) Claimants were aware of Respondents' long-standing bonus practice and relied upon it in rendering services their employment.

In Hall v. United Parcel Service, 76 N.Y.2d 27, 556 N.Y.S.2d 21 (1990), the court determined that "[a]n employee's entitlement to a bonus is governed by the terms of the employer's bonus plan." Although the plaintiff in Hall did not qualify for his employer's bonus plan, there is no question that Claimants qualified for Respondents' bonus plan. The Claimants all performed their jobs during 2002 based upon the understanding that their year-end bonus would be determined by their individual performance, their department's performance, and the performance of the firm. Since Robertson Stephens' practices, policies and verbal assurances constitute a "bonus plan," Claimants are entitled to bonus compensation for 2002 in accordance with that plan.

Respondents are also liable to Claimants for their unpaid bonus compensation under the doctrine of quantum meruit. Under this theory, one who accepts and benefits from the services of another who expects to be paid must pay the individual the reasonable value of those services. See Martin H. Bauman Assoc. v. H&M International Transport, 171 A.D.2d 479, 567 N.Y.S.2d 404, 408 (1st Dep't 1991); Griner v. Foskey, 158 Ga.App.769, 771, 282 S.E.2d 150, 152 (1981); J. A. Sullivan Corp. v. Commonwealth, 397 Mass. 789, 792-98, 494 N.E.2d 374, 376-79 (1986); Earhart v. William Low Company, 25 Cal.3d 503, 600 P.2d 1344 (1979); First National Bank of Springfield v. Malpractice Research, Inc., 179 Ill.2d 353, 688 N.E.2d 1179 (1997). Claimants provided substantial services to Respondents in 2002, and should be compensated accordingly.

In prior years, Claimants received substantial bonuses based on their performance, as shown by the chart below. In most instances, Claimants earned bonuses over the course of the last three years averaging from \$1 million to \$4 million as compared to annual base salaries of no more than \$200,000 (except for one Claimant who earned a \$250,000 annual base salary). Respondents' refusal to pay Claimants their earned bonuses is improper. Instead, Respondents should be compelled to pay Claimants their earned and promised 2001 and 2002 bonus compensation, plus interest.

### **Claim For Severance Pay**

Claimants were dismissed without receiving any severance pay. Respondents offered to pay Claimants severance only if they agreed to release Respondents from "any claim, demand or cause of action of any kind" they may have against Respondents. Claimants were entitled, however, to receive severance pay from Respondents under Respondents' severance plans, policies and practices, and Claimants ask that they be awarded all amounts, as of yet undetermined, to which they are entitled as former executives of the firm.

Severance plans are "employee welfare benefit plans" within the meaning of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.* ("ERISA"); see Gilbert v. Burlington Industries, Inc., 765 F.2d 320, 325 (2d Cir. 1985). As a result, each of Respondents' severance plans, practices and policies constitutes an employee benefit plan under

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ERISA. Respondents' failure to pay severance benefits to Claimants under the most favorable severance arrangement applicable to them constitutes a violation of ERISA. Claimants are therefore entitled to the severance payments they should have received, as well as recovery of their reasonable attorneys' fees expended in obtaining those payments. See ERISA, 29 U.S.C. § 1132(g)(1). Claimants ask the Panel to award them the unpaid severance to which they are entitled, plus their attorneys' fees and liquidated damages in recovering such benefits.

### **Fraud, Negligent Misrepresentation and Breach of Fiduciary Duty Claims**

An action for fraud can be shown by proof that Respondents made a false, material misrepresentation of an existing fact with knowledge that it was false (or reckless disregard as to whether it was true or false), with the intent that Claimants rely on such misrepresentations, and upon which Claimants reasonably relied to their detriment. Higginbottom v. Thiele Kaolin Co., 251 Ga. 148, 152, 304 S.E.2d 365 (1983); see also Werner v. American Int'l Group, Inc., 201 F.3d 446 (9<sup>th</sup> Cir. 1999) ("[T]he elements of a fraudulent inducement claim are: (a) misrepresentation; (b) scienter; (c) intent to defraud; (d) justifiable reliance; and (e) resulting damage."); Northeastern Univ. v. Deutsch, 2002 WL 968857, at \*3 (Mass.Super. March 21, 2002) ("To state a claim for fraudulent misrepresentation, the plaintiff 'must show a false statement of material fact made to induce the plaintiff to act, together with reliance on the false statement by the plaintiff to the plaintiff's detriment.'"); Bd. of Educ. of City of Chicago v. A, C and S, Inc., 131 Ill.2d 428, 546 N.E.2d 580 (1989) (elements in a fraudulent misrepresentation are "(1) a false statement of material fact, (2) knowledge or belief of the falsity by the party making it, (3) intention to induce the other party to act, (4) action by the other party in reliance on the truth of the statements, and (5) damage to the other party resulting from such reliance"). Alternatively, Claimants can show that the Respondents, instead of misrepresenting an existing fact, made promises with the present intention not to perform "or with knowledge that the future event would not occur." Higginbottom, 251 Ga. at 152.

The elements of a claim for negligent misrepresentation are the same as those for a fraudulent misrepresentation claim, except that Claimants need not show that Respondents knew their statement was false at the time it was made. Respondents' carelessness or negligence in ascertaining the truth of their statement is sufficient. Bd. of Educ., 131 Ill. 2d at 453.

The elements of a fraudulent concealment claim are: (1) a relationship between parties that creates a duty to disclose; (2) knowledge of material facts by a party bound to make such disclosures; (3) non-disclosure; (4) scienter; (5) reliance by the injured party, and (6) damages. Zackiva Communications Corp. v. Horowitz, 826 F. Supp. 86 (S.D.N.Y. 1993); see also Brass v. American Film Technologies, Inc., 987 F.2d 142 (2d Cir. 1993); Mosier v. Southern California Physicians Insurance Exchange, 63 Cal.App.4<sup>th</sup> 1022, 74 Cal.Rptr.2d 550 (1998); Tigner v. Shearson-Lehman Hutton, Inc., 201 Ga.App. 713, 411 S.E.2d 800 (1991). A duty to disclose arises when one party has superior knowledge not readily available to the other party, or where the parties stand in fiduciary or confidential relationship to one another. Ceribelli v. Elghanayan, 990 F.2d 62 (2d Cir. 1993).

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Respondents' fraudulent statements and concealments, including misrepresentations regarding Fleet's intent to sell and/or liquidate Robertson Stephens, misrepresentations concerning the value of Robertson Stephens Restricted Units, and Fleet's lack of intent to complete the MBO, form the basis for Respondents' liability for fraudulent misrepresentation, fraudulent concealment, and negligent misrepresentation. Moreover, Respondents' misrepresentations regarding the value of Claimants' Robertson Stephens restricted units, and Fleet's intentions regarding the sale of Robertson Stephens and the MBO constitute additional bases for fraud and negligent misrepresentation claims. Claimants' reliance included accepting Robertson Stephens restricted units, declining other employment, and continuing to perform services yielding substantial revenues to Respondents.

Respondents, by virtue of their superior knowledge of the facts at issue, owed a duty to Claimants. Respondents also owed a duty to Claimants by virtue of Respondents' status as majority shareholders of Robertson Stephens common stock. As courts in California and New York have recognized, "[w]hen a number of stockholders combine to constitute themselves a majority in order to control the corporation as they see fit, they become for all practical purposes the corporation itself, and assume the trust relation occupied by the corporation towards its stockholders." Jones v. H.F. Ahmanson & Co., 1 Cal.3d 93, 111, 460 P.2d 464 (1969) (quoting Ervin v. Oregon Ry. & Nav. Co., 27 F. 625, 631 (C.C.S.D.N.Y. 1886)). Thus, the majority shareholders stand in a position of fiduciaries to the minority shareholders, and a parent company cannot "operate the subsidiary for the benefit of the group as a whole [rather than] for the benefit of that particular subsidiary." Id.; Robb v. Eastgate Hotel, 347 Ill. App. 261, 106 N.E.2d 848 (1952) ("The majority shareholders do not by the mere reason of their holdings thereby become trustees for the minority stockholder in voting on a sale of assets. However, equity will impose upon them the obligation of trustees if in forcing disposition of assets they overreach the minority stockholders and reap benefits in which the minority does not share."). "Where, as here, it is sufficiently alleged that the effect of the controlling stockholders self-serving manipulation of corporate affairs causes a singular economic injury to minority interests alone, the minority have stated a cause of action for 'special' injury." Grace Brothers, Ltd. v. Farley Industries Inc., 264 Ga. 817, 819, 450 S.E.2d 814, 816 (1995) (quoting In re Tri-Star Pictures, Inc. Litigation, 634 A.2d 319, 330 (Del. 1993)) (recognizing cause of action for minority shareholders where majority shareholders breached a fiduciary duty when they caused a merger where minority stock holders suffered from depressed price).

Respondents violated their fiduciary duty to Claimants by engineering the failed sale and failed MBO of the Robertson Stephens firm, depriving Claimants of all of the value of their Robertson Stephens restricted units, concealing and misrepresenting material facts relating to such sale, the MBO and the value of the restricted units, and other conduct reflecting Respondents' campaign to place the interests of Fleet ahead of those of the Claimants and Robertson Stephens.

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**Statutory Claims**

In addition, Respondents' willful failure to pay Claimants amounts due them also entitles Claimants to statutory relief under their respective State's laws. (See relevant sections of state statutes attached hereto as Exhibit C.) Pursuant to these "wage statutes," Claimants seek all unpaid wages, including all bonus and severance pay, liquidated damages, and costs and attorneys' fees.

**Individual Claims**

As stated earlier, each Claimant's bonus was primarily a function of performance. The following table will provide a breakdown of each Claimant's bonus compensation paid to Claimants for the years 1999, 2000 and 2001.<sup>15</sup> This illustrates the simple fact that bonuses comprised a significant portion of each Claimant's total annual compensation, and also provides a backdrop against which the Panel can determine the amounts Claimants should have received in WARN Act notice pay and bonus compensation for 2002.

The chart is not in alphabetical order (the order in the caption) but has been coded to maintain the confidentiality of each Claimant's specific compensation information. Claimants' names, job titles and any additional identifying information will be submitted as soon as the parties agree to a suitable confidentiality agreement and/or the Arbitrators provide for such confidentiality.

Name	2002 Base Salary	2001 Bonus Compensation	2000 Bonus Compensation	1999 Bonus Compensation	RS Restricted Units <sup>16</sup>	WARN Damages <sup>17</sup>
1	\$200,000	\$2,576,000	\$2,320,000	\$687,000	\$438,382	\$309,277
2	\$200,000	\$350,000	\$600,000 <sup>18</sup>	N/A	\$469,693	\$128,000
3	\$200,000	\$750,000	\$6,851,917	\$3,500,000	\$2,436,917	\$650,106
4	\$200,000	\$390,000	\$3,800,000	\$1,700,000	\$1,409,086	\$360,000
5	\$150,000	\$200,000	\$1,000,000	N/A	\$72,023	\$133,333
6	\$200,000	\$450,000	\$3,000,000	\$1,500,000	\$1,452,780	\$266,388
7	\$150,000	\$200,000	\$1,250,000	\$575,000	\$484,400	\$136,111
8	\$200,000	\$700,000	\$7,000,000	\$4,424,998	\$2,505,048	\$695,000
9	\$200,000	\$1,300,000	\$3,900,000	N/A	\$1,158,584	\$466,666

<sup>15</sup> Claimants' compensation figures are based on the best information available to Claimants and are subject to revision upon the receipt of official compensation records from Respondents.

<sup>16</sup> For the purposes of this chart, the RS Restricted Units have been valued at \$7 per unit. These amounts do not include Restricted Units earmarked for Robertson Stephens employees but not allocated.

<sup>17</sup> Pursuant to the statute, the WARN damages were calculated using the average total compensation for the past three years. Where an employee had not been employed at Robertson Stephens for three years, the damages were calculated using the average total compensation for all years worked at Robertson Stephens.

<sup>18</sup> This employee began working at Robertson Stephens in April 2000; this bonus reflects 8 months of work.

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Name	2002 Base Salary	2001 Bonus Compensation	2000 Bonus Compensation	1999 Bonus Compensation	RS Restricted Units <sup>16</sup>	WARN Damages <sup>17</sup>
10	\$150,000	\$1,300,000	\$2,150,000	\$1,010,000	\$1,459,395	\$266,388
11	\$200,000	\$750,000	\$3,400,000	\$2,200,000	\$1,722,217	\$386,111
12	\$200,000	\$450,000	\$2,500,000	\$1,900,000	\$438,382	\$302,777
13	\$200,000	\$650,000	\$4,482,500	\$2,800,000	\$1,252,524	\$474,027
14	\$200,000	\$1,300,000	\$5,200,000	\$4,800,000	\$1,929,088	\$661,111
15	\$200,000	\$1,300,000	\$4,247,535	N/A	\$1,158,584	\$364,794
16	\$200,000	\$745,000	\$2,205,923	\$1,453,484	\$671,349	\$278,000
17	\$125,000	\$650,000	\$675,000	\$435,000 <sup>19</sup>	\$100,205	\$115,227
18	\$150,000	\$1,200,000	\$1,650,000	\$1,050,000	\$580,860	\$241,388
19	\$200,000	\$1,300,000	N/A	N/A	\$866,117	\$250,000
20	\$200,000	\$1,300,000	N/A	N/A	\$350,000	\$250,000
21	\$150,000	\$1,000,000	N/A	N/A	\$322,000	\$191,000
22	\$200,000	\$2,410,000	\$950,000	\$325,000	\$876,764	\$237,944
23	\$150,000	\$300,000	\$1,500,000	\$1,100,000	\$288,708	\$188,000
24	\$150,000	\$1,000,000	N/A	N/A	\$329,000	\$167,000
25	\$150,000	\$450,000	\$850,000	\$600,000	\$866,117	\$200,000
26	\$150,000	\$1,300,000	\$1,000,000	\$850,000	\$288,708	\$201,000
27	\$200,000	\$600,000	\$7,300,000	\$2,300,000	\$3,131,310	\$600,000
28	\$200,000	\$1,500,000	\$1,300,000	N/A	\$866,117	\$200,000
29	\$200,000	\$1,000,000	\$525,000 <sup>20</sup>	N/A	\$866,117	\$200,000
30	\$200,000	\$1,300,000	\$2,200,000	\$850,000	\$782,824	\$280,000
31	\$200,000	\$1,500,000	\$4,300,000	\$2,050,000	\$2,478,784	\$470,000
32	\$150,000	\$1,350,000	\$1,350,000	N/A	\$626,262	\$250,000
33	\$200,000	\$1,600,000	\$2,900,000	\$1,800,000	\$1,904,777	\$383,333
34	\$200,000	\$475,000	\$2,850,000	\$1,950,000	\$822,906	\$326,000
35	\$200,000	\$1,300,000	\$800,000	N/A	\$876,764	\$208,333
36	\$300,000	\$600,000	\$6,900,000	\$4,400,000	\$2,245,348	\$711,000
37	\$200,000	\$300,000	\$1,625,000	\$1,025,000	\$876,764	\$192,000
38	\$200,000	\$400,000	\$4,000,000	\$3,500,000	\$1,252,524	\$472,222
39	\$200,000	\$1,000,000	\$4,970,000	\$3,850,000	\$1,781,269	\$523,416
40	\$200,000	\$100,000	\$3,040,000	\$2,850,000	\$866,117	\$366,000
41	\$150,000	\$200,000	\$2,800,000	\$1,100,000	\$871,290	\$257,756
42	\$200,000	\$2,300,000	\$5,400,000	\$1,250,000 <sup>21</sup>	\$1,409,086	\$650,000

<sup>19</sup> This employee began working at Robertson Stephens in April 1999; this bonus reflects 8 months of work.<sup>20</sup> The employee began working at Robertson Stephens in July 2000; this bonus reflects six months of work.<sup>21</sup> This employee began working at Robertson Stephens in November 1999; this bonus reflects one month of work.

Mr. Robert S. Clemente

-19-

December 11, 2002

Conclusion

For the reasons stated herein, Claimants seek relief, including their costs and attorneys' fees, on their claims of breach of contract, quantum meruit, fraud, negligent misrepresentation, breach of fiduciary duty, violation of ERISA, violation of the WARN Act, violations of state labor law statutes, unpaid bonus compensation and severance, all in amounts to be determined at trial, as well as such other relief as the Panel may deem appropriate.

Respectfully submitted,

LIDDLE & ROBINSON

By: \_\_\_\_\_

Jeffrey L. Liddle  
Attorneys for Claimants  
685 Third Avenue  
New York, New York 10017  
(212) 687-8500

**FOR MORE INFORMATION CONTACT JEFFREY L. LIDDLE AT 212-687-8500**

December 11, 2002

**PRESS RELEASE**

***FORMER ROBERTSON STEPHENS MANAGING DIRECTORS AND PRINCIPALS SUE FLEET AND ROBERTSON STEPHENS FOR OVER \$140 MILLION IN DAMAGES.***

(New York, NY) Today, 34 former Managing Directors and 8 former Principals of Robertson Stephens Group, Inc., sued FleetBoston Financial Corporation, Fleet Securities, Inc., Robertson Stephens, Inc. and Robertson Stephens Group, Inc. for unpaid compensation and other damages emanating from the fraudulent cancellation last summer of a management buyout of the Robertson Stephens operation.

Jeffrey L. Liddle, Esq. of Liddle & Robinson, L.L.P. in New York City represents the former Robertson Stephens employees, who were employed in the cities of New York, Atlanta, Boston and Chicago, the state of California and the country of Israel.

The 42 former Robertson Stephens employees (hereinafter "Claimants") filed an arbitration demand with the New York Stock Exchange, Inc. today seeking over \$140 million in damages, plus punitive damages, attorneys' fees, interest and costs. These damages are based on, among other things, Fleet's and Robertson Stephens's failure to pay promised and earned bonus compensation to Claimants for 2001 and 2002 and to provide proper notice pay under the Worker Adjustment and Retraining Notification ("WARN") Act, 29 U.S.C. § 2101 *et seq.* In

addition, Fleet made fraudulent misrepresentations and material omissions concerning Claimants' employment, compensation and equity interests in Robertson Stephens, and breached its fiduciary duties as majority shareholder of Robertson Stephens by acting in the interests of its own shareholders in first announcing the sale of, and then shutting down, Robertson Stephens.

On April 16, 2002 Fleet abruptly announced that it was putting Robertson Stephens up for sale, even though Fleet had no buyer in place. Worse still, Fleet advertised its reasons for the sale, stating that Robertson Stephens's strong operating performance during 1999 and 2000 was "aberrational" and that the future of investment banking business rested with larger platform firms and "not boutiques like Robbie Stephens." Not surprisingly after this announcement, Fleet was unable to obtain a buyer, and instead began negotiating a management buyout of the firm. On July 12, 2002, after more than 250 hours of negotiations, more than 12 hours of presentations and more than 1,000 pages of fully drafted legal agreements – and on the very day that the buyout agreements were to be distributed for signature – Fleet announced instead that it was shutting Robertson Stephens down, thereby terminating Claimants' employment.

Upon the termination of their employment, Claimants were not offered any bonus compensation for 2002, nor were they provided proper notice pay under the WARN Act. Furthermore, Claimants forfeited substantial amounts of non-cash deferred compensation, including Robertson Stephens Restricted Units, which had previously been valued by Fleet at no less than \$7 per share, but accorded a zero value by the separation agreements offered to Claimants.

*Attached is a copy of the Statement of Claim filed with the NYSE in Alt, et al. v. FleetBoston Financial Corporation, et al.*

## Sherry Shore

---

**From:** Christine Palmieri  
**Sent:** Tuesday, December 10, 2002 6:11 PM  
**To:** 'susanne.craig@wsj.com'  
**Subject:** Robertson Stephens

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press release.doc

Christine A. Palmieri  
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**FOR MORE INFORMATION CONTACT JEFFREY L. LIDDLE AT 212-687-8500**

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*Attached is a copy of the Statement of Claim filed with the NYSE in Alt, et al. v. FleetBoston Financial Corporation, et al.*

## Sherry Shore

**From:** Craig, Susanne <Susanne.Craig@wsj.com>  
**Sent:** Tuesday, December 10, 2002 6:40 PM  
**To:** Christine Palmieri  
**Subject:** RE: Robertson Stephens

Christine,

How many of the total principals and MDs did you sign up, as a percentage of total?

-----Original Message-----

From: Christine Palmieri [mailto:[cpalmieri@liddlerobinson.com](mailto:cpalmieri@liddlerobinson.com)]  
Sent: Tuesday, December 10, 2002 6:11 PM  
To: Craig, Susanne  
Subject: Robertson Stephens

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<<press release.doc>>

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**From:** Craig, Susanne <Susanne.Craig@wsj.com>  
**Sent:** Wednesday, December 11, 2002 1:08 PM  
**To:** Christine Palmieri  
**Subject:** RE: Robertson Stephens

Christine,

jeff wanted to know if you have a stamped copy of the suit, or if you have a messenger receipt demonstrating the suit has been dropped off at the Exchange. We need to send the suit to fleet at some point and just want to make sure it has been handed over.... Sue

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To: Craig, Susanne  
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**Sent:** Wednesday, December 11, 2002 1:10 PM  
**To:** 'Craig, Susanne'  
**Subject:** RE: Robertson Stephens

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**From:** Craig, Susanne <Susanne.Craig@wsj.com>  
**Sent:** Wednesday, December 11, 2002 1:17 PM  
**To:** Christine Palmieri  
**Subject:** RE: Robertson Stephens

awesome. thanks.

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## Sherry Shore

**From:** Christine Palmieri  
**Sent:** Wednesday, December 11, 2002 1:45 PM  
**To:** 'Craig, Susanne'  
**Subject:** RE: Robertson Stephens

The claim has been filed.

-----Original Message-----

From: Craig, Susanne [mailto:Susanne.Craig@wsj.com]  
Sent: Wednesday, December 11, 2002 1:17 PM  
To: Christine Palmieri  
Subject: RE: Robertson Stephens

awesome. thanks.

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To: Craig, Susanne  
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## Sherry Shore

**From:** Craig, Susanne <Susanne.Craig@wsj.com>  
**Sent:** Wednesday, December 11, 2002 1:55 PM  
**To:** Christine Palmieri  
**Subject:** RE: Robertson Stephens

is it possible to e-mail a copy of the complaint with the stamp on it?

-----Original Message-----

From: Christine Palmieri [mailto:cpalmieri@liddlerobinson.com]  
Sent: Wednesday, December 11, 2002 1:45 PM  
To: Craig, Susanne  
Subject: RE: Robertson Stephens

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Sent: Wednesday, December 11, 2002 1:17 PM  
To: Christine Palmieri  
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awesome. thanks.

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## Sherry Shore

**From:** Craig, Susanne <Susanne.Craig@wsj.com>  
**Sent:** Wednesday, December 11, 2002 4:05 PM  
**To:** Christine Palmieri  
**Subject:** RE: Robertson Stephens

Any chance of getting a stamped copy of the claim?

-----Original Message-----

From: Christine Palmieri [mailto:[cpalmieri@liddlerobinson.com](mailto:cpalmieri@liddlerobinson.com)]  
Sent: Tuesday, December 10, 2002 6:11 PM  
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**From:** Christine Palmieri  
**Sent:** Wednesday, December 11, 2002 4:19 PM  
**To:** 'Craig, Susanne'  
**Subject:** RE: Robertson Stephens

Sure. Do you want it by fax or by hand?

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bonuses after shutting Robertson down.

In addition, the executives say they were entitled to tens of millions of dollars worth of Robertson stock because of their 23 million shares, or 23% ownership interest. In 2001, an investment bank said Robertson was worth \$700 million, according to the complaint, and earlier in 2002, FleetBoston had valued each share at \$7. But after shutting Robertson down, FleetBoston declared the shares to be worthless.

**Write to Susanne Craig at susanne.craig@wsj.com<sup>3</sup> and John Hechinger at john.hechinger@wsj.com<sup>4</sup>**

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- (3) mailto:susanne.craig@wsj.com
- (4) mailto:john.hechinger@wsj.com

*Updated December 12, 2002 12:28 a.m. EST*

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*Robertson Stephens*

Part 3. Pg 216 of 216

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\*\*\* TX REPORT \*\*\*

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CONNECTION ID	
ST. TIME	12/11 16:40
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PGS. SENT	56
RESULT	OK

LIDDLE & ROBINSON, L.L.P.

685 THIRD AVENUE  
NEW YORK, N.Y. 10017

(212) 687-8500  
FACSIMILE: (212) 687-1505

SAMUEL FINKELSTEIN (1006-1998)

JAMES A. BATSON  
BLAINE H. BORTNICK  
ETHAN A. BRECHER  
SUSAN POTTER ELLIS  
MICHAEL E. GRENERT  
JEFFREY L. LIDDLE  
LAURENCE S. MOY  
CHRISTINE A. PALMIERI  
MARC A. SUSSEWEIN

MIRIAM M. ROBINSON  
SENIOR COUNSEL

DAVID I. GREENBERGER  
DAVID MAREK  
JAMES C. MALLIOS  
CANDACE M. ADIUTORI  
LEILA I. NOOR  
CHRISTINA J. KANG  
JEFFREY ZIMMERMAN\*  
TOD J. SWIECICHOWSKI\*  
JOHN A. KAROL\*

\*AWAITING ADMISSION  
TO THE BAR

FACSIMILE

TO: Sue Craig  
FROM: Christine Palmieri  
DATE: 12/11/02  
FACSIMILE NUMBER: (212) 416-02350  
OUR FACSIMILE NUMBER: (212) 687-1505

NUMBER OF PAGES TO FOLLOW:

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